

***United States Court of Appeals  
for the Second Circuit***



**APPELLANT'S  
APPENDIX**





ORIGINAL

74-2248

United States Court of Appeals

For the Second Circuit.

ECONOMIC OPPORTUNITY COMMISSION OF NASSAU COUNTY,  
Inc.,

*Appellant,*

*against*

CASPAR WEINBERGER, individually and in his capacity as Secretary of the Department of Health, Education and Welfare; BERNICE BERNSTEIN, individually and in her capacity as Regional Director of the Department of Health, Education and Welfare, Region 2, SAUL ROSOFF, individually and in his capacity as Acting Director of the Office of Child Development of the Department of Health, Education and Welfare; JOSUE DIAZ, individually and in his capacity as Regional Program Director of the Office of Child Development of the Department of Health, Education and Welfare for Region 2, and LESTER MILLER, individually and in his capacity of Board Chairman of the Glen Cove Child Day Care Center, Inc.,

*Appellees.*

APPEAL FROM DECISION OF THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF NEW YORK.

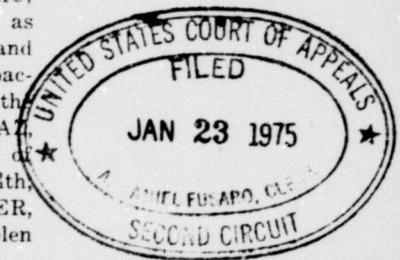
APPENDIX FOR APPELLANT.

MALONE, DORFMAN & TAUBER,  
*Attorneys for Appellant,*

147 West Merrick Road,

Freeport, N. Y. 11520

(516) FR 9-2500.



PAGINATION AS IN ORIGINAL COPY



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1a

UNITED STATES COURT OF APPEALS.

For the Second Circuit.

-----X

ECONOMIC OPPORTUNITY COMMISSION OF NASSAU COUNTY,  
INC.,

*Appellant,*

*against*

CASPAR WEINBERGER, individually and in his capacity as Secretary of the Department of Health, Education and Welfare; BERNICE BERNSTEIN, individually and in her capacity as Regional Director of the Department of Health, Education and Welfare, Region 2, SAUL ROSOFF, individually and in his capacity as Acting Director of the Office of Child Development of the Department of Health, Education and Welfare, JOSUE DIAZ, individually and in his capacity as Regional Program Director of the Office of Child Development of the Department of Health, Education and Welfare for Region 2, and LESTER MILLER, individually and in his capacity of Board Chairman of the Glen Cove Child Day Care Center, Inc.,

*Appellees.*

APPEAL FROM DECISION OF THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF NEW YORK.

-----X

## RELEVANT DOCKET ENTRIES.

## ECONOMIC OPPORTUNITY COMM OF NASSAU CTY. INC VS. C V

DATE	FILINGS—PROCEEDINGS	AMOUNT REPORTED IN EMOLUMENT RETURNS	
3/1/74	Complaint filed. Summons issued.	1	J
3-20-74	Summons returned and filed/executed.	2	
4-10-74	By BRUCHHAUSEN, J. - Order to show cause dtd 4-1-74 to enjoin defts from deobligating certain Federal Funds originally al- located to plttf, etc. ret 4-19-74 at 10 A.M. with proof of service filed.	3	
4-12-74	Plttf's memorandum of law in support of order to show cause filed.	4	
4/19/74	Before MISHLER, CH. J.- Case called- Order to Show Cause for a preliminary & permanent injunction restraining and enjoining the defts argued-Decision reserved.		
4-30-74	Defts' ANSWER filed.	5	
5/3/74	Before MISHLER, CH. J.- Case called- Plttf's Motion for pre- liminary injunction, etc. argued-Decision reserved.		
5/3/74	Affidavit of William J. Cosgrove filed.	6	
6-12-74	Supplemental memorandum of law in opposition to application for preliminary injunction filed.	7	
6-18-74	Memorandum in opposition to application for preliminary injun- ction filed.	8	
6-21-74	By MISHLER, CH. J. - Order to show cause why an order for summary judgment dismissing plttf's complaint should not be made etc. ret. 6-28-74 @ 10 A.M. filed.	9	
6/26/74	Notice of Cross-Motion, ret. 6/28/74 re: for a summary judgment in favor of the plttf	10	
6/28/74	Before MISHLER, CH. J.- Case called- Motion argued- Decision reserved-All papers to be submitted by July 12, 1974		
7-11-74	Affidavit of Angel F. Rivera and Federal Defts supplemental memorandum of law filed.	11/12	
7-12-74	Stenographer's transcript dtd 6-28-74 filed.	13	
7-12-74	Letter dtd 7-9-74 from David L. Lollis to John Kearse filed	14	
7-23-74	Affidavit of Angel F. Rivera in support of deft's motion for summary judgment with supplemental memorandum of law filed.	15/16	



74 C 346 EOC OF NASSAU COUNTY, INC. VS. C. WEINBERGER.

DATE	FILINGS—PROCEEDINGS	CLERK'S FEES		AMOUNT REPORTED IN EMOLUMENT RETURNS
		PLAINTIFF	DEFENDANT	
25/74	By MISHLER, M.J.- Memorandum of Decision and Order dated July 25, 1974 that the motion for Summary Judgment is granted and the complaint is dismissed . The Clerk is directed to enter Judgment in favor of defts and against plttf dismissing the complaint. P/C mailed to the attys.			17
29/74	Judgment dtd 7/26/74 in favor of defts & as against plttf dismissing complaint filed. ( P/C mailed to attys )			18
9-10-74	Notice of appeal filed. Duplicate mailed to C of A. Jn			19
-26-74	Affidavit of Helen Dreeben filed, re: service of notice of appeal.			20
9-30-74	Bond undertaking for costs on appeal filed.			21
10-4-74	Stenographer's transcript dtd 5-3-74 filed.			22
10-4-74	Plttf's memorandum of law filed.			23
10-4-74	Affidavit of John Kearse filed.			24
10-4-74	Affidavit of Charles Tauber in support of motion for summary judgment in favor of plttf filed.			25
10-4-74	Plttf's supplemental memorandum of law filed.			26
10-4-74	Letter from Charles Tauber dtd 7-12-74 filed.			27

A TRUE COPY ATTEST  
 OCT 16 1974  
 LEWIS ORGEL, CLERK  
 DEPUTY CLERK

AFFIDAVIT OF JOHN KEARSE (REFERRED TO IN  
APPELLANT'S BRIEF, P. 6).

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

ECONOMIC OPPORTUNITY COMMISSION  
OF NASSAU COUNTY, INC.,

Plaintiff-Petitioner,

- against -

AFFIDAVIT

Civil Action  
No. 74 C 346

CASPAR WEINBERGER, Secretary of the  
Department of Health, Education and  
Welfare, BENJAMIN BENNETT, SAUL  
ROSOFF, JOSUE DIAZ and LESTER MILLER,

Defendant-Respondents.

STATE OF NEW YORK )  
: ss.:  
COUNTY OF NASSAU )

JOHN KEARSE, being duly sworn, deposes and says:

That he is the Executive Director of the plaintiff, ECONOMIC OPPORTUNITY COMMISSION OF NASSAU COUNTY, INC., and is fully familiar with the facts and circumstances herein, and makes this affidavit in support of the plaintiff's position in the above captioned case.

It is apparent from what has transpired thus far in this litigation, that there is a considerable amount of confusion with respect to the status of the parties herein, and your deponent would like to take this opportunity to apprise the court by way of a documented statement of the factual background so that the court may obtain a clear and concise picture of the position of the plaintiff relative to the dispute of the parties herein.

As the court is undoubtedly aware the plaintiff is a Community Action Agency as defined in 42 USC 2790 for the purposes of carrying out the provisions of the Economic Opportunity Act of 1964 (42 USC 2701, et seq.) and has been designated since 1969 as the grantee agency for the County of Nassau in accordance with these provisions. Section 212(a) of the Economic Opportunity Act of 1964 (42 USC 2795) states as follows:



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"In order to carry out its overall responsibility for planning, coordinating, evaluating, and administering a Community Action Program, a Community Action Agency must have authority under its charter or applicable law to receive and administer funds under this title, funds and contributions from private or local public sources which may be used in support of a Community Action Program, and funds under any Federal or State Assistance Program, pursuant to which a public or private non-profit agency (as the case may be) organized in accordance with this part could act as grantee, contractor, or sponsor of projects appropriate for inclusion in a Community Action Program. A community Action Agency must also be empowered to transfer funds so received, and to delegate powers to other agencies, subject to the powers of the governing board in its overall program responsibilities. This power to transfer funds and delegate powers must include the powers to make transfers and delegations covering component projects in all cases where this will contribute to efficiency and effectiveness or otherwise further program objectives."

Section 213(a) of the C E A of 1964 (42 USC 2796) further states as follows:

"Each Community Action Agency shall observe and shall (as appropriate) require or encourage other agencies participating in a Community Action Program to observe standards of organization, management and administration which will assure, so far as reasonably possible, that all program activities are conducted in a manner consistent with the purposes of this title and the objective of providing assistance effectively, efficiently and free of any taint of partisan political bias or personal or family favoritism. Each Community Action Agency shall establish or adopt rules to carry out this section, which shall include rules to insure full staff accountability in matters governed by law, regulations or agency policy .... And each Community Action Agency shall adopt for itself and other agencies using funds or exercising authority for which it is responsible, rules designed to establish specific standards governing salaries, salary increases, travel and per diem allowances, and other employee benefits; to assure that only persons capable of discharging their duties with competence and integrity are employed, and that employees are promoted or advanced under impartial procedures calculated to improve agency performance and effectiveness.....".

In accordance with the mandates dictated by Congress, plaintiff has set up in the County of Nassau some eleven delegate agencies in eleven target poverty areas of Nassau County for the purposes of operating local anti-poverty programs in the eleven target areas. One of the target areas

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in Nassau County is the City of Glen Cove. And in 1965 (at which time plaintiff was the operating arm of the Health and Welfare Counsel of Nassau County), plaintiff entered into a contract with the Glen Cove Economic Opportunity Counsel Inc. (hereinafter called the Glen Cove EOC). A copy of the contract with the Glen Cove EOC and the plaintiff is herewith attached as plaintiff's Exhibit "1". It should be pointed out to the court that a perusal of this contract shows that in the Glen Cove area the Glen Cove EOC was the sole agency with which the plaintiff contracted to administer and effectuate the Anti Poverty Programs in the Glen Cove area. I should like to emphasize as strongly as I can at this point that there is not now, nor has there ever been at any time, a contract between either the plaintiff and the defendant, Glen Cove Child Day Care Center, Inc., nor with the Glen Cove EOC and the Glen Cove Child Day Care Center, Inc. The Glen Cove EOC was the sole delegate agency with which the plaintiff contracted to administer various anti-poverty programs in the Glen Cove area.

Among the many programs called for by the Economic Opportunity Act of 1964, the program known as Project Headstart was mandated by Section 222(a) (42 USC 2809) which stated as follows:

"(1) A program to be known as "Project Headstart" focused upon children who have not reached the age of compulsory school attendance which (a) will provide such comprehensive health, nutritional, education, social and other services as the director finds will aid the children to attain their full potential, and (b) will provide for direct participation of the parents of such children in the development, conduct, and over all program direction at the local level."

As can be seen in the contract between the plaintiff and the delegate agency (Glen Cove EOC), the ultimate responsibility for the Headstart Program in Glen Cove was then as it is now the responsibility of the plaintiff. However, the Glen Cove EOC, as the delegate agency, was designated to run the Headstart Program on a day-to-day basis so as to insure maximum participation on the local level, with the close supervision and assistance of the plaintiff. This was the same organizational set-up that the plaintiff used, not only in



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the Glen Cove area, but in all eleven target poverty areas in Nassau County, so as to insure maximum participation on the local level as required by the Economic Opportunity Act of 1964 and as required by the guidelines subsequently set forth by the Office of Economic Opportunity and the Department of Health, Education and Welfare Office of Child Development.

To further emphasize the point that at no time did the Glen Cove Child Day Care Center ever run the Headstart Program in Glen Cove, the court's attention is respectfully called to plaintiff's Exhibit "2" attached herewith, which is a letter from the Chairman of the Glen Cove Child Day Care Center Board, Mr. Lester Miller, to Mr. Josue Diaz, the Assistant Regional Director for Headstart and Child Development of HEW Region 2, dated April 3, 1973. Paragraph 2 of Mr. Miller's letter specifically states as follows:

"The Glen Cove Child Day Care Board, Inc. did not submit a budget in application for funding as a delegate agency as we had been informed that since first the Glen Cove EOC and then the Nassau County EOC were the grantees, our Board could not be directly delegated to run the program. We originally applied for the contract as a subdelegate agency, and this was turned down."

Thus it is obvious that the defendants, Glen Cove Child Day Care Center, themselves, knew that they never had authority to run the Headstart Program.

When the Headstart Program began to function in 1965, the Parents Advisory Committee of the Glen Cove Headstart Program was formed and it was properly constituted by having a majority of parents on the committee. At that time the GCCDCC Board of Directors participated on the Parents Advisory Committee as a minority representing the Community Center. However, as time went on this minority group, which was made up of the GCCDCC Board, began to assume the parental functions and more and more tried to assume control of the Parents Advisory Committee (which was later changed to the Policy Committee when the program was transferred from the Office of Economic

AFFIDAVIT OF JOHN KEARSL (REFERRED TO IN  
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Opportunity to the Department of HEW) and attempted to control the Policy Committee so as to obtain the status of a delegate agency. By 1969 the GCCDCC Board began to request subdelegate or delegate status from the plaintiff. Plaintiff thereafter made inquiry to the OEO Regional Office requesting clarification of their position on delegate or subdelegate status for the GCCDCC.

Plaintiff was then advised by Mr. Harry Vega, the Acting Director of the Community Action Program's Regional Office that the OEO looked unfavorably on subdelegate or delegate status of the GCCDCC and indicated that, under OEO guidelines, it was only the Delegate Agencies with whom we had contracted which were to administer the Headstart Programs. See plaintiff's Exhibit "3" attached hereto.

I have also attached hereto a series of Exhibits numbered "4" through "13" which consist of a series of exchange of letters, and minutes of the various meetings of both the defendant, GCCDCC, and the plaintiff, which show the effort made by the defendant, GCCDCC, to obtain either subdelegate or delegate status.

In the meantime, the plaintiff attempted to maintain the Headstart Program in Glen Cove by offering assistance to the Headstart Policy Committee in the hopes that they would be able to get a group of parents involved in the Policy Committee who would be willing to assume responsibility for the operation of the Headstart Program, which was consistent with the guidelines set forth by the Office of Child Development. In fact, even though we were aware that the Policy Committee was not properly constituted in that it lacked sufficient parental involvement under OCD guidelines, we obtained specific permission from the OCD to permit this situation to exist for the fiscal year 8/1/71 through 8/1/72, so as not to close down the Headstart Program in Glen Cove. However, we were directed by OCD to see to it that the Policy Committee was restructured according to the OCD guidelines (requiring more parental



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involvement), and we so advised defendant, GCCDCC. See plaintiff's Exhibit "14" - the letter of understanding from the Office of Child Development, signed by Elaine Danavall, and plaintiff's Exhibit "15" - my letter dated August 3, 1972 to the Chairman of the Headstart Policy Committee.

In March of 1972, as a result of difficulties in a number of their programs, the Glen Cove EOC requested assistance from the plaintiff by way of being put into a receivership status wherein plaintiff undertook to reorganize the programs which were in difficulty, by assuming direct control and direct payment and all legal and fiscal responsibilities for the operation of the various programs, including the Headstart Program. This was done in an effort to reorganize the Glen Cove EOC so that it could thereafter reassume the control of these programs at the local level, but plaintiff would maintain direct control of these programs so as not to interrupt the programs themselves. This, of course, included the Headstart Program.

As a result of this procedure the Policy Committee of the Glen Cove Headstart Program was left as an operating entity, but the plaintiff, rather than the Glen Cove EOC assumed direct legal and fiscal responsibility for the operation of the Headstart Program. This meant that the plaintiff paid the bills, the payrolls, and the other expenses involved in the Headstart Program. It also meant that the local director of the Glen Cove Headstart Program was placed under the direct supervision of the plaintiff. It should be noted parenthetically here, that the plaintiff was and is authorized by its corporate charter to operate Day Care Centers and was and is also licensed to operate Day Care Centers by the New York State Board of Social Services.

Attached hereto are Exhibits "16", "17" and "18".

Exhibit "16" is a series of checks issued under the account name of GCCDCC. However, it should be noted by the court all of these checks were signed by either O. L. Sims or Juan Lenoir, Chairman of the Glen Cove EOC Board and the EOC Director. None of these checks were signed by any of the officers of the GCCDCC.

AFFIDAVIT OF JOHN KEARSE (REFERRED TO IN  
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Exhibit "17" indicates checks which were paid by the Glen Cove EOC for the Headstart Account and again it should be noted that all of the checks herein were signed by myself as Executive Director of the plaintiff and by the Chairman of the Board of the plaintiff. (This, of course, was necessitated by the receivership status of the Glen Cove EOC at that time.)

Exhibit "18" herein shows a series of checks and requests for appropriations on a monthly basis from the Glen Cove EOC to the plaintiff. It should be pointed out once more that nowhere is there a request for a check made out directly to the GCCDCC. All monies were funneled through Glen Cove EOC to the Headstart Program.

The situation remained this way until July of 1972, and during this period of time the plaintiff constantly prodded the Policy Committee of the Headstart Program to get more parental involvement in their makeup, but to no avail. (See for example, Exhibits "4", "6", "7", "13" and "15".) It should also be pointed out that Exhibits "5" and "14" herein clearly show that the OCD was well aware of this situation since Mrs. Danavall was present at a meeting of the GCCDCC Board and advised the Board that it must meet the guidelines of HEW and that the GCCDCC Board may not be the policy making group unless it was restructured. Mrs. Danavall advised the GCCDCC Board at their meeting of January 26, 1971 that the Board could only remain as an advisory board unless it was restructured in accordance with HEW guidelines. In view of the fact that this has never been done and the GCCDCC Board remains now as it always had been, virtually devoid of parental involvement, it is most amazing to your deponent that HEW/OCD can now take the position that the plaintiff must fund the GCCDCC.

During this period of time plaintiff became aware of the fact that the GCCDCC Board had made an agreement with the Department of Social Services of Nassau County for a purchase of services arrangement for an additional 18



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children to be added to the already existing 32 children in Glen Cove. This was done in the name of the Glen Cove Headstart Program and without any authority by either the full policy committee or the plaintiff. The money for this arrangement was placed in a separate account in the name of the GCCDCC, when such monies should have been used for program improvement or expansion. Plaintiff questioned the validity of this arrangement, since there were never 18 more children added to the Program, but the GCCDCC gave to the Department of Social Services the names of 18 of the 32 children who were already in the Program, and banked the money from the Department of Social Services under a separate account in the name of GCCDCC.

In spite of all of this, the plaintiff still attempted to keep the Headstart Program going in Glen Cove and was reluctant to press charges against the GCCDCC, but I wrote to the Department of Social Services requesting that the matter be cleared up, and advising them that the plaintiff had no agreement with them. See plaintiff's Exhibit "19" attached hereto.

Thus since the GCCDCC Board refused to accede to our request to reorganize their policy committee in accordance with OEO and HEW guidelines, and as a result of the use of the money from the double funding it became evident that they were attempting to circumvent these guidelines and become an entity unto themselves in the administration of the Headstart Program, they were advised by the plaintiff on July 3, 1972 that the Policy Committee of the Headstart Program had until July 15, 1972 to comply with the OEO/HEW mandates and reorganize along the proper guidelines. (See plaintiff's Exhibit "20"). No response was forthcoming and on August 3, 1972 they were advised that no further monies would be allocated for the Headstart Program in Glen Cove. (See plaintiff's Exhibit "21").

It should be further pointed out to the court herein that all action taken by the plaintiff was taken with the approval of the entire Board of Directors of the plaintiff, ECONOMIC OPPORTUNITY COMMISSION OF NASSAU COUNTY, INC., and not by your deponent's actions alone. See Exhibit "22".

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The court should also be aware of the fact that at the Policy Council meeting of August 16, 1972 wherein the County Wide Policy Council unanimously voted that the Glen Cove EOC Board (and not the GCCDCC Board) be the delegate agency for Glen Cove, there was present at that meeting Ms. Carol Gionta, the Community Representative of the OCD and Lillian Alexander, the Parent Program specialist of the OCD. Thus again it can be seen that the OCD was well aware of this entire situation and again, I must reiterate my amazement at its present stance requiring us to fund the GCCDCC.

Thus, from July 31, 1972 until the present time there has been no Headstart Program in Glen Cove. The reason for this is that the plaintiff has adhered to the instructions and guidelines of OEO and HEW/OCD.

In August of 1972 the plaintiff notified the Office of Child Development that it would not fund the Glen Cove Headstart Program until compliance with the HEW guidelines. Plaintiff was then advised in February of 1973 by HEW to hold the money in escrow pending the determination of an appeal by the GCCDCC to HEW/OCD. (See plaintiff's Exhibit "23").

On August 30, 1973 we were advised by the OCD that we must enter into a contract with the GCCDCC as a delegate agency for the Headstart Program in Glen Cove. (See plaintiff's Exhibit "24"). This, of course, was in direct contravention with what we had earlier been told by HEW. It was contrary to the guidelines and procedures promulgated by OEO and HEW throughout the years. (See also Exhibit "25" - a letter from one Josue Diaz, Regional Program Director of Child Development of OCD advising us that we could request a review of HEW's decision by Saul Rosoff, the Acting Director of the OCD who would render a final decision.)

It should be pointed out to the court that, in the letter of September 20, 1973 (Exhibit "25", Mr. Diaz, Regional Program Director of OCD states in paragraph 3 thereof as follows:



AFFIDAVIT OF JOHN KEARSE (REFERRED TO IN  
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"Presently there are no official administrative procedures for the processing of delegate agency appeals. Our agency is currently in the process of developing these."

Thereafter, on November 19, 1973 we received a carbon copy of a letter from Mr. Saul Rosoff, Acting Director of OCD to Mr. Miller, Board Chairman of GCCDCC, advising him that Mr. Rosoff concurred with the views of OCD and would require us to continue to fund the GCCDCC. This was followed by letters on January 8, 1974 and February 8, 1974, giving us the option of funding the GCCDCC as a delegate agency for the Headstart Program in Glen Cove, or that this would be done by the OCD. (The court will note what sort of an option this really is).

Although further attempts were made by plaintiff to discuss the matter, the decision of HEW appeared to be final, and the present law suit, therefore, was instituted.

The plaintiff, EOC, has a record of achievement unmatched by any Community Action Agency throughout the country. Plaintiff has consistently throughout its history sought to establish programs which would conform to the guidelines set forth by HEW and OEO and has always attempted to see to it that these programs were fairly and equitably administered in the best interests of the people in poverty areas.

It has always been the policy of the plaintiff to attempt to get maximum involvement in these programs of the people most directly affected by them and not to permit these programs to be run by small groups or cliques from above. Obviously, this has not always been easy to accomplish, but the goal of involving those people themselves, who are most affected by these programs, is a laudable one and should not be changed by the whim of a few.

At this juncture the Glen Cove EOC has been reorganized and revitalized and is ready to proceed with the carrying out of the Headstart Program in Glen Cove along the lines required both by HEW and OEO. However, we are

AFFIDAVIT OF JOHN KEARSE (REFERRED TO IN  
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being frustrated in our efforts to proceed along these lines by the arbitrary requirements of HEW that our grant funds be used to fund the Glen Cove Child DCC to run this Program, even though HEW and OCD know that the GCCDCC is not and never was in conformity with the requirements and regulations as set forth by HEW and OEO. This fact was even admitted by the U.S. Attorney to this court.

Your deponent, therefore, respectfully requests that this court rectify the situation and require the Department of Health, Education and Welfare to continue to fund the plaintiff in order to carry on the Headstart Program in Glen Cove.

---

John Kearse

Sworn to before me this  
31st day of May, 1974.

---

Notary Public



EXHIBIT 3, ANNEXED TO AFFIDAVIT OF JOHN KEARSE  
(REFERRED TO IN APPELLANT'S BRIEF, P. 6).

June 3, 1971

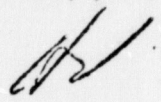
Mr. John Kearse, Executive Director  
Economic Opportunity Commission of Nassau County, Inc.  
320 Old Country Road  
Garden City, L. I., N. Y. 11530

Dear John:

This is to advise that the grantee, the Economic Opportunity Commission of Nassau County, Inc., is responsible for all grants received to operate all programs under its jurisdiction, including Head Start.

This responsibility can only be delegated, by contract, to a local CAP Board duly incorporated and recognized by the CAA. These delegate agencies will be responsible for providing the programs of the CAA in one of the designated poverty target areas of Nassau County.

Sincerely,



Harry Vega  
Acting District Director  
Community Action Program

cc: Barbara Ramsay ←

16a

EXHIBIT 21, ANNEXED TO AFFIDAVIT OF JOHN KEARSE (REFERRED  
TO IN APPELLANT'S BRIEF, P. 6 AND APPEARS AT PAGES  
[A15-16] OF APPELLEES' APPENDIX).



EXHIBIT 27, ANNEXED TO AFFIDAVIT OF JOHN KEARSE  
(REFERRED TO IN APPELLANT'S BRIEF, P. 7).  
DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

OFFICE OF THE SECRETARY

P.O. BOX 1102

WASHINGTON, D.C. 20011

OFFICE OF CHILD  
DEVELOPMENT

November 19, 1973

Mr. Lester Miller  
Board Chairman  
Glen Cove Child Day Care Center  
Lincoln Settlement House  
113 Glen Cove Avenue  
Glen Cove, New York 11542

Dear Mr. Miller:

By letter dated October 5, 1973, I acknowledged the receipt of the letter from the Economic Opportunity Commission of Nassau County, Incorporated (EOC) dated September 24, 1973, requesting the formal review of the decision of Region II Office of Child Development dated August 30, 1973, relative to the Glen Cove Child Day Care Center (GCCDCC).

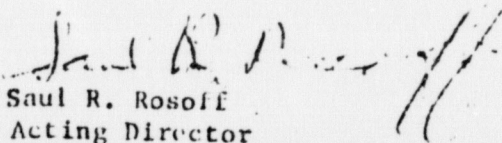
By letter dated October 11, 1973, I transmitted the procedures that would be followed for the purposes of the appeal.

Neither EOC nor GCCDCC submitted any additional material. Accordingly, I have reviewed the written material as submitted to the Regional Office in March and April, 1973.

Please be advised that I concur with the views of the Regional Office and sustain the decision transmitted by letter to Mrs. Myrna Adams, Chairperson, Board of Directors, EOC., dated August 30, 1973, from Mr. Josue E. Diaz, Regional Program Director for Child Development. It is my finding that the written record as submitted by EOC does not establish defects and deficiencies in the administration and operation of the GCCDCC as alleged. It follows that the denial of refunding of the GCCDCC by the EOC would appear to be arbitrary.

In the event that the EOC does not wish to continue as grantee for the Head Start program delegated to GCCDCC, I will recommend that the Regional Office obtain an application for direct funding from the GCCDCC, and that the funding for the EOC be adjusted accordingly.

Sincerely,

  
Saul R. Rosoff  
Acting Director

FEDERAL APPELLEES' MEMORANDUM OF LAW, PAGE ii  
(REFERRED TO IN APPELLANT'S BRIEF, P. 7).

the funds to GCD. Other years plaintiff sent funds directly to GCD.

In 1972 a dispute between plaintiff and GCD over certain aspects of GCD's program came to a head and plaintiff indicated to GCD that it would not give GCD the Glen Cove Headstart contract for the fiscal year 1972-1973 (commencing August 1, 1972). Following lengthy inaction by plaintiff on GCD's application to be funded for the new fiscal year, GCD elected to exercise its right of appeal, pursuant to Title 42 U.S.C. §2944(1). This section provides for an appeal by any agency who would like to serve as a delegate agency and whose application is either rejected or not acted upon within a reasonable period of time by its community action agency.

No formal regulations have been promulgated for these appeals. GCD presented its appeal to the New York Regional Office of OCD. Plaintiff was notified of the appeal and both plaintiff and GCD were requested to submit evidence and other documentation that would support their respective positions. Plaintiff was notified that, in the event that GCD's appeal was upheld, one possible option might be for OCD to directly fund GCD, rather than funding it through plaintiff. This would obviously entail a reduction in plaintiff's budget.

Following a review of all the material submitted by both parties, Mr. Josue Diaz, Regional Program Director for Child Development of OCD, determined that plaintiff was



TRANSCRIPT OF TESTIMONY, PAGE 71 (REFERRED TO IN  
APPELLANT'S BRIEF, P. 8).

THE COURT: It might very well be for a

short period of time. They may use up the money, I  
don't know.

MR. MALONE: We have arranged for facilities.

MR. KRAMER: Nothing has been approved for  
them.

THE COURT: The quicker I can decide this --  
I might say, even if my decision may ultimately  
prove to be wrong or partly wrong, I think it's  
just as important that I get my opinions filed in a  
hurry so that the unhappy party can go up to the  
Court of Appeals and get a determination.

Now, obviously I am limited in time and don't  
have the opportunity to think about it and deliberate,  
research in depth. I can't give the finished product  
that I should hope for, but I'm willing to sacrifice  
that, I'll do the best I can, understanding that it's  
important that the parties know what their positions  
are before June 1.

If I could get a decision out by the end of  
next week, I would love to.

Mr. Malone is talking about Wednesday.

Now, all I can say is we must cooperate with  
a view to getting a review by our Court of Appeals  
as soon as possible. I'll do the best I can. I'll

EXHIBIT 6, ANNEXED TO AFFIDAVIT OF JOHN KEARSE (REFERRED TO IN APPELLANT'S BRIEF, P. 10, AND APPEARS IN APPELLEES' APPENDIX AT P. [A14]).

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EXHIBIT 15, ANNEXED TO AFFIDAVIT OF JOHN KEARSE, IS THE SAME AS EXHIBIT 21 AND IS REFERRED TO IN APPELLANT'S BRIEF, PAGE 6.



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EXHIBIT 6, ANNEXED TO AFFIDAVIT OF JOHN KEARSE  
(REFERRED TO IN APPELLANT'S BRIEF, P. 10).

**ECONOMIC OPPORTUNITY COMMISSION OF NASSAU COUNTY, INC.**

106 MAIN STREET, HEMPSTEAD, NEW YORK 11550

PHONE: (516) 292-9710

JOHN L. KEARSE, EXECUTIVE DIRECTOR

MYRNA C. ADAMS, CHAIRMAN

January 15, 1974

1-17-74

Mr. Saul Rosoff - Acting Director  
Office of Child Development-HEW  
P.O. Box 1182  
Washington, D.C. 20013

Dear Mr. Rosoff:

This acknowledges receipt of your letter of January 7, 1974,  
relative to the Glen Cove Child Day Care Center.

We are requesting a meeting with you as a final attempt to  
clarify the Agency's posture around this issue before it is neces-  
sary for us to take legal action. It is our feeling that the excess-  
ive magnitude of correspondence has caused you to lose sight of the  
significance of this matter and the kind of precedence that your de-  
cision will establish.

Kindly inform us of the date of this meeting at your earliest  
convenience.

Sincerely,

*Myrna Adams* (L)

Myrna Adams, Chairman  
Board of Directors

MA:bw

cc.: Mr. John L. Kears  
Ms. Jean Love  
Mr. Josue Diaz  
Mr. Angel Rivera

EXHIBIT 14, ANNEXED TO AFFIDAVIT OF JOHN KEARSE  
(REFERRED TO IN APPELLANT'S BRIEF, P. 10).  
DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

REGION II  
FEDERAL BUILDING  
25 FEDERAL PLAZA  
NEW YORK, NEW YORK 10007

OFFICE OF  
CHILD DEVELOPMENT

July 7, 1972

Mrs. Pauline Washington, Chairwoman  
Board of Directors  
Economic Opportunity Commission  
of Nassau County, Inc.  
351 Columbus Avenue  
Freeport, New York 11520

Re: Head Start P.A. 23  
Program Year "G"  
(8/1/72-7/31/73)

Dear Mrs. Washington:

An on-site pre-review was made of EOC Nassau's budget application in March 1972. However, no pre-review visits were made to the individual centers. This was due to the fact that the plans for Intensive Training in the various components as recommended in the 1971 Monitoring Report were not finalized in time. Consequently, we did not deem it justifiable to monitor the centers' actual operations until some Intensive Training had taken place.

Beginning with the new program year, your Community Representative, Miss Gionta, will arrange to visit the centers to observe the classes in operation and assess with the staff their reactions to the training they received from our contractors. The follow-up evaluation of the Intensive Training program is part of our overall plan to provide continuous assistance to Head Start staff to meet the ever-increasing need to offer the highest quality services to children and families.

In our initial communications with you, it was understood that the Intensive Training is mandatory for all Head Start staff. As the Grantee, you are responsible for the compliance of each delegate agency center to participate in this training.

Based on a review of your budget application, both by Miss Gionta as well as by various OCD Specialists who have had contact with your program, we would like to clarify certain aspects of your Head Start operation. We are bringing these issues to your attention to insure efficient functioning at the central Head Start administrative level as well as at the Head Start center level. We would hope, too, that our office will have a better understanding of your on-going operations.

MAY 30 1974



EXHIBIT 14, ANNEXED TO AFFIDAVIT OF JOHN KEARSE  
(REFERRED TO IN APPELLANT'S BRIEF, P. 10)

Mrs. Pauline Washington - Page 2

**A. Staff**

1. A review of your Personnel Policies indicates the need for clarification of the hiring and firing of Head Start staff with the concurrence of the Policy Committees at the delegate agency level and the Policy Council at the administrative/supportive services level.

The Policy Committees/Council have the same concurring rights, as set forth in the Parent Policy Regulations (Instruction 1-31), despite the employee's probationary status.

2. We are also requesting that the process for this concurrence be defined in the By-Laws of each of these bodies.
3. These modifications should be submitted to this office for review prior to their inclusion in the respective documents.

**B. Career Development**

1. We would appreciate having the following career development status on each Head Start staff member, by center (including professionals):

Name	-	Position	-	Education (Degrees, Major, Credit Courses)
------	---	----------	---	---

**C. Classroom Activities**

1. To assist our office in future on-site review of classroom activities, we would like to have each center submit a list of classroom materials, equipment and supplies, according to utilization, in the following categories:

- a) Emotional growth and development
- b) Intellectual " " "
- c) Social " " "
- d) Physical " " "

**D. Policy Committees and Policy Council**

The Regional and National offices of Child Development believe that the attendance of Head Start staff at Committee/Council

EXHIBIT 14, ANNEXED TO AFFIDAVIT OF JOHN KEARS.  
(REFERRED TO IN APPELLANT'S BRIEF, P. 10)

Mrs. Pauline Washington - Page 3

meetings as resource persons is a positive means of encouraging and fulfilling mutual complementarity of roles as defined in the Policy Regulations.

At the same time, it is important that we be especially sensitive to the needs of parents, in particular, to occasionally request that staff not attend a specific meeting. Should such requests occur too frequently, it would be incumbent upon the chairman of these bodies to confer with the Grantee and/or Miss Gionta so as to avoid possible misunderstandings.

1. In line with our responsibility to assist Policy Committees/Council in the proper interpretation and implementation of the Parent Policy Regulations, we are again requesting the following:

- a) Signed copies (by P.C. Secretary) of monthly meetings to be submitted to this office each month.
- b) Announcement of regular and/or special meetings to be sent to Miss Gionta each month by the Secretaries of Policy Committees and Council.

2. Our Parent Policy Guidelines (P. 5, #5), state that:

"Every corporate board operating a Head Start program must have a Policy Committee or Council as defined by HEW. The corporate body and the Policy Committee or Council must not be one and the same."

While we are aware that permission was granted for this Program Year "F" (August 1, 1971-July 31, 1972) to implement another type of structure for your Policy Committees and Council, we cannot continue to grant this exception.

Beginning with Program Year "G", it is requested that these bodies comply with the structure as outlined in the above-mentioned regulations. We would commend, of course, that there be an exchange of representatives with the CAA Boards of Directors.



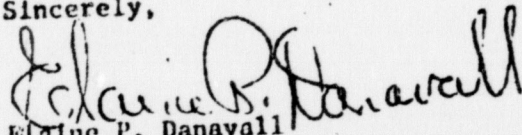
EXHIBIT 14, ANNEXED TO AFFIDAVIT OF JOHN KEARSE  
(REFERRED TO IN APPELLANT'S BRIEF, P. 10)

Mrs. Pauline Washington - Page 4

Should you have any questions on the foregoing, please do not hesitate to contact your Community Representative.

It is understood that EOC Nassau County, Inc. accepts the contents of this Letter of Understanding, unless we are officially informed to the contrary within ten (10) days.

Sincerely,



Elaine P. Danavall  
Acting Assistant Regional Director  
for Head Start and Child Development

cc: Mr. Luis De Guzman, Chairman, Policy Council  
Mr. John L. Kearse, Executive Director  
✓ Ms. Glenda Collins, Head Start Director

EXHIBIT 20, ANNEXED TO AFFIDAVIT OF JOHN KEARSE (REFERRED TO IN APPELLANT'S BRIEF, PP. 6 AND 10, AND APPEARS IN APPELLEES' APPENDIX AT PP. [A10-12]).

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EXHIBIT 5, ANNEXED TO AFFIDAVIT OF JOHN KEARSE (REFERRED TO IN APPELLANT'S BRIEF, P. 11 AND APPEARS IN APPELLEES' APPENDIX AT PP. [R40-42]).



EXHIBIT 22, ANNEXED TO AFFIDAVIT OF JOHN KEARSE  
 (REFERRED TO IN APPELLANT'S BRIEF, P. 11).  
POLICY COUNCIL MEETING - AUGUST 16, 1972

THOSE IN ATTENDANCE

Carol Gionta, OSD Community Representative ✓  
 Lillian Alexander, OSD Parent Program Specialist ✓  
 Ruby Spann, PI Chairman, Glen Cove  
 Eugene Jackson, Glen Cove  
 Jeanette Luald, Parent Representative, Glen Cove  
 Geraldine Bersey, Rockville Centre HS  
 Lorena Shannon, Rockville Centre HS  
 Lorraine Vahl, Delegate, Hicksville-Levittown  
 Margaret Dearing, Parent, Glen Cove  
 Yvonne Murphy, Parent, Glen Cove  
 Joanne C., Secretary, PC Glen Cove  
 Thomas F. Luald, Parent, Glen Cove  
 Luis DeGuzman, PC Chairman, Farmingdale  
 Alide D. Cohan, HS Director, Manhasset/Great Neck  
 James Couch, Deputy Director, EOC  
 Glenda Collins, Head Start Director, EOC  
 Ruth DuBose, Roosevelt  
 Jean Love, Roosevelt  
 Mrs. Holiday, Manhasset

The meeting was opened at 9:10 p.m.  
 Agenda included:

Glen Cove Full Year Head Start  
 Carol Stateman, former nutritionist for  
 Full Year Head Start of Nassau

Mrs. Jeanette Luald, parent, of Glen Cove, opened the meeting discussing the order of events that had led to Mr. Kearse's notification to Glen Cove FYHS that they would not be funded for '72-'73 because of the alleged illegal structure of the Policy Council Board. Mrs. Luald proceeded to read correspondence exchanged between Mr. Kearse and Glen Cove FYHS.

Mr. Couch spoke next in reference to the fact that Glen Cove situation had been dealt with countless number of times and proceeded to read from the minutes of August 10 Program Committee of the Commission.

Mrs. Lillian Alexander raised the question of what exactly is the request of Glen Cove Full Year Head Start - whether they are requesting delegate status for the program or sub-delegate. After speaking with Mrs. Alexander earlier, the request would be a delegated status.

Mr. Couch explained that Glen Cove will not have a FYHS program until the new Glen Cove CAP Board has been seated. Mrs. Alexander raised the question of whether the Policy Council has concurred to the request of Glen Cove FYHS. It was resolved that as of this meeting, it had not been concurred.

EXHIBIT 22, ANNEXED TO AFFIDAVIT OF JOHN KEARSE  
(REFERRED TO IN APPELLANT'S BRIEF, P. 11)

POLICY COUNCIL MEETING, AUGUST 16, 1972

Mr. Dayton requested Mr. Couch to re-read the minutes of the August 10 program community meeting with the objective being to clarify whether the committee upholds Mr. Kearse's decision. It was resolved by Mr. Couch that the commission does uphold Mr. Kearse.

Mr. DeGuzman explained to the Board Members the situation and it was at that time openly discussed by the members. Mrs. Dayton, explained that Glen Cove Day Care Board has always operated in the capacity of the CAP Agency.

Mrs. Collins expressed a desire for the Board to vote on the issue at hand. Mrs. Alexander asked whether the members of the board fully understood the situation and if so... A vote was taken on the question presented by Glen Cove. A motion was made by Mr. DeGuzman to take a vote on it and it was unanimously voted that the upcoming EOC CAP Board be the delegate agency for Glen Cove, FYHS.

A memo was read requesting two parents to accompany Mrs. Gerri Johnson to participate in a Child Development Seminar to be held September 24 and 25 in Washington, D.C. One parent will be chosen from the Policy Council and one parent from Career Development. It was agreed by the board member that Ruth Dubose, P.C. Chairman of Roosevelt FYHS will represent the Board.

The next order of business involved the requested hearing of Mrs. Stateman formerly nutritionist specialist for FYHS in Nassau County. Mrs. Alexander brought up the fact that at a previous meeting, it was agreed that no hearing would be called in the respect that Mrs. Stateman had not at that time requested a hearing.

A piece of correspondence regarding Mrs. Stateman's termination was submitted by Mrs. Collins. A unanimous vote was taken favoring a hearing before the Personnel Committee in behalf of Mrs. Stateman's request. The Personnel Committee will then take its recommendation to the Council. A letter will be sent out to the members of the Personnel Committee. A RSVP will be requested. A letter will be sent to Mrs. Stateman notifying her of the date August 23 at 6:00 p.m.

Mrs. Marjorie Long, Early Childhood Development Coordinator FYHS, resignation was read. Council decided there was no need for follow-up.

The agenda for the next meeting will be programmatical matters, expansion program of Department of Social Service, Career Development; the meeting will be held on the 3rd Wednesday of September.



EXHIBIT 9, ANNEXED TO AFFIDAVIT OF JOHN KEARSE  
(REFERRED TO IN APPELLANT'S BRIEF, P. 12).

August 6, 1971

Mr. William J. Johnson, President  
Glen Cove Child Day Care Center, Inc.  
Lincoln Settlement House  
113 Glen Cove Avenue  
Glen Cove, New York 11542

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Dear Mr. Johnson:

As a follow up to our recent telephone conversation and your letter of June 22, 1971, I should like to reiterate that sub-delegation of programs by CAAs is frowned upon by the office of Economic Opportunity.

The questions you pose should be resolved by the contract written between your agency and the Economic Opportunity Commission of Nassau County Inc. in the ensuing program year beginning August 1, 1971.

Please do not hesitate to call upon us if you require any further assistance.

Sincerely yours,

*Harry Vega*  
Harry Vega

Acting District Director

cc. John Kearse, Executive Director  
✓ Barbara Ramsay, Asso. Dir. for Adm.

TRANSMITTAL NOTICE--HEAD START POLICY MANUAL  
(REFERRED TO IN APPELLANT'S BRIEF, P. 13).

OCD-HS TRANSMITTAL NOTICE - HEAD START POLICY MANUAL 70.2

GENERAL SERIES

8/10/70

WHAT WE ARE SENDING

Instruction I-31, Section B 2, The Parents

MANUAL MATERIAL TO BE REPLACED

Head Start Policy Manual Part B, Section 2, pages 10, 11, 12,  
dated September, 1967

WHAT YOU SHOULD DO

Remove above pages relating to parents from the Head Start  
Policy Manual dated September 1967. File attached material  
in loose leaf notebook.

BACKGROUND

This section has been revised to clarify the intention of HEW  
and OEO to facilitate the involvement of parents of Head Start  
children "...in the development, conduct, and overall program  
direction at the local level."<sup>1</sup> These guidelines have been  
developed in response to the numerous requests received during  
the past three years from Head Start parents, staff and  
administrators for more specific delineation of their functions  
and responsibilities in local programs.

It must be emphasized that this revised section presents  
minimal requirements only, and are not intended to reduce the  
level of participation in those programs which have surpassed  
the minimum standards. Please note page 5, section C, FUNCTIONS:  
"Local groups may negotiate for additional functions and a  
greater share of responsibility if all parties agree."

If Head Start children are to reach their fullest potential  
there must be an opportunity for Head Start parents to  
influence the character of programs affecting the development  
of their children. The organizational structure of every Head  
Start program must provide this opportunity by increasing  
the effectiveness of parent participation in the planning and  
implementation of programs on the local level, in order that  
parents may also become more effective in bringing about  
positive change in the lives of their children.

<sup>1</sup> Public Law 90-22, December 23, 1967, Part B, Section 222, (I) (B).



31a

TRANSMITTAL NOTICE

Policy-setting bodies will now be called Policy Committees or Councils. Another change is the inclusion of charts which assign specific functions and responsibilities for the major parties involved. These charts are not to be used separately, but only in conjunction with the narrative portion.

Translating these revised policies into practice in local programs is the responsibility of Head Start Directors, staff and parents. If the task of implementing them is approached in a spirit of mutual understanding and partnership among all parties, we are confident that the result will be the improvement of the quality and effectiveness of all the components of Head Start, and increased benefits to Head Start children.

ANAL.....  
AT B ..

## HEAD START POLICY

## TRANSMITTAL NOTICE

Instruction I-30  
Section B-2

## I-30-2 THE PARENTS

## A. INTRODUCTION

Head Start believes that the gains made by the child in Head Start must be understood and built upon by the family and the community. To achieve this goal, Head Start provides for the involvement of the child's parents and other members of the family in the experiences he receives in the child development center by giving them many opportunities for a richer appreciation of the young child's needs and how to satisfy them.

Many of the benefits of Head Start are rooted in "change". These changes must take place in the family itself, in the community, and in the attitudes of people and institutions that have an impact on both.

It is clear that the success of Head Start in bringing about substantial changes demands the fullest involvement of the parents, parental-substitutes, and families of children enrolled in its programs. This involvement begins when a Head Start program begins and should gain vigor and vitality as planning and activities go forward.

Successful parental involvement enters into every part of Head Start, influences other anti-poverty programs, helps bring about changes in institutions in the community, and works toward altering the social conditions that have formed the systems that surround the economically disadvantaged child and his family.

Project Head Start must continue to discover new ways for parents to become deeply involved in decision-making about the program and in the development of activities that they deem helpful and important in meeting their particular needs and conditions. For some parents, participation may begin on a simple level and move to more complex levels. For other parents the movement will be immediate, because of past experiences, into complex levels of sharing and giving. Every Head Start program is obligated to provide the channels through which such participation and involvement can be provided for and enriched.



Unless this happens, the goals of Head Start will not be achieved and the program itself will remain a creative experience for the preschool child in a setting that is not reinforced by needed changes in social systems into which the child will move after his Head Start experience.

This sharing in decisions for the future is one of the primary aims of parent participation and involvement in Project Head Start.

#### B. THE ROLE OF THE PARENTS

EVERY HEAD START PROGRAM MUST HAVE EFFECTIVE PARENT PARTICIPATION. There are at least four major kinds of parent participation in local Head Start programs.

1. PARTICIPATION IN THE PROCESS OF MAKING DECISIONS ABOUT THE NATURE AND OPERATION OF THE PROGRAM.
2. PARTICIPATION IN THE CLASSROOM AS PAID EMPLOYEES, VOLUNTEERS OR OBSERVERS.
3. ACTIVITIES FOR THE PARENTS WHICH THEY HAVE HELPED TO DEVELOP.
4. WORKING WITH THEIR CHILDREN IN COOPERATION WITH THE STAFF OF THE CENTER.

Each of these is essential to an effective Head Start program both at the grantee level and the delegate agency level. Every Head Start program must hire/designate a Coordinator of Parent Activities to help bring about appropriate parent participation. This staff member may be a volunteer in smaller communities.

1. PARENT PARTICIPATION IN THE PROCESS OF MAKING DECISIONS ABOUT THE NATURE AND OPERATION OF THE PROGRAM

#### HEAD START POLICY GROUPS

##### a. Structure

The formal structure by which parents can participate in policy making and operation of the program will vary with the local administrative structure of the program.

## TRANSMITTAL NOTICE

Normally, however, the Head Start policy groups will consist of the following:

1. Head Start Center Committee. This committee must be set up at the center level. Where centers have several classes, it is recommended that there also be parent class committees.
2. Head Start Policy Committee. This committee must be set up at the delegate agency level when the program is administered in whole or in part by such agencies.
3. Head Start Policy Council. This Council must be set up at the grantee level.

When a grantee has delegated the entire Head Start program to one Delegate Agency, it is not necessary to have a Policy Council in addition to a Delegate Agency Policy Committee. Instead one policy group serves both the Grantee Board and the Delegate Agency Board.

b. Composition

Chart A describes the composition of each of these groups.

CHART A

<u>Organization</u>	<u>Composition</u>
1. Head Start Center Committee	1. Parents whose children are enrolled in that center.
2. Head Start Policy Committee (delegate agency)	2. At least 50% parents of Head Start children presently enrolled in that delegate agency program plus representatives of the community*
3. Head Start Policy Council (grantee)	3. At least 50% parents of Head Start children presently enrolled in that grantee's program plus representatives of the community**



## TRANSMITTAL NOTICE

\*Representatives of the Community (Delegate Agency level): A representative of neighborhood community groups (public and private) and of local neighborhood community or professional organizations, which have a concern for children of low income families and can contribute to the development of the program. The number of such representatives will vary depending on the number of organizations which should appropriately be represented. The Delegate Agency determines the composition of their committee (within the above guidelines) and methods to be used in selecting representatives of the community. Parents of former Head Start children may serve as representatives of the community on delegate agency policy groups. All representatives of the community selected by the agency must be approved by elected parent members of the committee. In no case, however, should representatives of the community exceed 50% of the total committee.

\*\*Representatives of the Community (Grantee Agency level): A representative of major agencies, (public and private) and major community civic or professional organizations which have a concern for children of low income families and can contribute to the program. The number of such representatives will vary, depending on the number of organizations which should appropriately be represented. The applicant agency determines the composition of the council (within the above guidelines) and the methods to be used in selecting representatives of the community. Parents of former Head Start children may serve as representatives of the community on grantee agency policy groups. All representatives of the community selected by the agency must be approved by elected parent members of the committee. In no case, however, should representatives of the community exceed 50% of the total committee or council.

SPECIAL NOTES

1. All parents serving on policy groups must be elected by parents of Head Start children currently enrolled in the program.
2. It is strongly recommended that the community action agency board have representation from the Head Start Policy Council to assure coordination of Head Start activities with other CAA programs. Conversely, community action agency board representation on the Policy Council is also recommended.
3. It is important that the membership of policy groups be rotated to assure a regular influx of new ideas into the program. For this purpose, terms of membership must be limited to no more than three years.

## TRANSMITTAL NOTICE

4. No staff member (nor members of their families as defined in CAP Memo 23A) of the applicant or delegate agencies shall serve on the council or committee in a voting capacity. Staff members may attend the meetings of councils or committees in a consultative non-voting capacity upon request of the council or committee.
5. Every corporate board operating a Head Start program must have a Policy Committee or Council as defined by HEW. The corporate body and the Policy Committee or Council must not be one and the same.
6. Policy groups for summer programs present a special problem because of the difficulty of electing parent representatives in advance. Therefore, the policy group for one summer program must remain in office until its successors have been elected and taken office. The group from the former program should meet frequently between the end of the program and the election of new members to assure some measure of program continuity. These meetings should be for the purpose of (a) assuring appropriate follow up of the children (b) aiding the development of the upcoming summer Head Start program, (c) writing of the application, (d) hiring of the director and establishment of criteria for hiring staff and, when necessary (e) orientation of the new members. In short, the policy group from a former program must not be dissolved until a new group is elected. The expertise of those parents who have previously served should be used whenever possible.

c. FUNCTIONS

The following paragraphs and charts describe the minimum functions and degrees of responsibility for the various policy groups involved in administration of local Head Start programs. Local groups may negotiate for additional functions and a greater share of responsibility if all parties agree. All such agreements are subject to such limitations as may be called for by OEO or HEW policy. Questions about this should be referred to your HEW regional office.

- 1) The Head Start Center Committee shall carry out at least the following minimum responsibilities:
  - a) Assists teacher, center director, and all other persons responsible for the development and operation of every component including curriculum in the Head Start program.
  - b) Works closely with classroom teachers and all other component staff to carry out the daily activities program.



## TRANSMITTAL NOTICE

6

- c) Plans, conducts, and participates in informal as well as formal programs and activities for center parents and staff.
- d) Participates in recruiting and screening of center employees within guidelines established by OEO/HEW, the Grantee Council and Board, and Delegate Agency Committee and Board.

The Head Start Policy Committee. Chart B outlines the major management functions connected with local Head Start program administered by delegate agencies and the degree of responsibility assigned to each participating group.

In addition to those listed functions, the committee shall:

- a) Serve as a link between public and private organizations, the grantee Policy Council, the Delegate Agency Board of Directors, and the community it serves.
  - b) Have the opportunity to initiate suggestions and ideas for program improvements and to receive a report on action taken by the administering agency with regard to its recommendations.
  - c) Plan, coordinate and organize agency-wide activities for parents with the assistance of staff.
  - d) Assist in communicating with parents and encouraging their participation in the program.
  - e) Aid in recruiting volunteer services from parents, community residents and community organizations, and assist in the mobilization of community resources to meet identified needs.
  - f) Administer the Parent Activity funds.
- 3) The Head Start Policy Council. Chart C outlines the major management functions connected with the Head Start program at the grantee level, whether it be a community action or limited purpose agency, and the degree of responsibility assigned to each participating group.

## TRANSMITTAL NOTICE

In addition to those listed functions, the Council shall:

- a) Serve as a link between public and private organizations, the Delegate Agency Policy Committees, Neighborhood Councils, the Grantee Board of Directors and the community it serves.
- b) Have the opportunity to initiate suggestions and ideas for program improvements and to receive a report on action taken by the administering agency with regard to its recommendations.
- c) Plan, coordinate and organize agency-wide activities for parents with the assistance of staff.
- d) Approve the selection of Delegate Agencies.
- e) Recruit volunteer services from parents, community residents and community organizations, and mobilizes community resources to meet identified needs.
- f) Distribute Parent Activity funds to Policy Committees.

It may not be easy for Head Start directors and professional staff to share responsibility when decisions must be made. Even when they are committed to involving parents, the Head Start staff must take care to avoid dominating meetings by force of their greater training and experience in the process of decision-making. At these meetings, professionals may be tempted to do most of the talking. They must learn to ask parents for their ideas, and listen with attention, patience and understanding. Self-confidence and self-respect are powerful motivating forces. Activities which bring out these qualities in parents can prove invaluable in improving family life of young children from low income homes.

Members of Head Start Policy Groups whose family income falls below the "poverty line index" may receive meeting allowances or be reimbursed for travel, per diem, meal and baby sitting expenses incurred because of Policy Group meetings. The procedures necessary to secure reimbursement funds and their regulations are detailed in OEO Instruction #6803-1.



## TRANSMITTAL NOTICE

## 2. PARTICIPATION IN THE CLASSROOM AS PAID EMPLOYEES, VOLUNTEERS OR OBSERVERS

Head Start classes must be open to parents at times reasonable and convenient to them. There are very few occasions when the presence of a limited number of parents would present any problem in operation of the program.

Having parents in the classroom has three advantages. It:

- a. gives the parents a better understanding of what the center is doing for the children and the kinds of home assistance they may require.
- b. shows the child the depth of his parents concern.
- c. gives the staff an opportunity to know the parents better and to learn from them.

There are, of course, many center activities outside the classroom (e.g., field trips, clinic visits, social occasions) in which the presence of parents is equally desirable.

Parents are one of the categories of persons who must receive preference for employment as non-professionals. Participation as volunteers may also be possible for many parents. Experience obtained as a volunteer may be helpful in qualifying for non-professional employment. At a minimum parents should be encouraged to observe classes several times. In order to permit fathers to observe it might be a good idea to have some parts of the program in the evening or on weekends.

Head Start Centers are encouraged to set aside space within the Center which can be used by parents for meetings and staff conferences.

## 3. ACTIVITIES FOR PARENTS WHICH THEY HAVE HELPED TO DEVELOP

Head Start programs must develop a plan for parent education programs which are responsive to needs expressed by the parents themselves. Other community agencies should be encouraged to assist in the planning and implementation of these programs.

## TRANSMITTAL NOTICE

Parents may also wish to work together on community problems of common concern, such as health, housing, education and welfare and to sponsor activities and programs around interests expressed by the group. Policy Committees must anticipate such needs when developing program proposals and include parent activity funds to cover the cost of parent sponsored activities.

4. WORKING WITH THEIR CHILDREN IN THEIR OWN HOME IN CONNECTION WITH THE STAFF OF THE CENTER

HEW requires that each grantee make home visits a part of its program: in parents permit such visits. Teachers should visit parents of summer children a minimum of once; in full year programs there should be at least three visits, if the parents have consented to such home visits. In those rare cases where a double shift has been approved for teachers it may be necessary to use other types of personnel to make home visits. Personnel such as teacher aides, health aides and social workers may also make home visits with, or independently of, the teaching staff but coordinated through the parent program staff in order to eliminate uncoordinated visits.

Head Start staff should develop activities to be used at home by other family members that will reinforce and support the child's total Head Start experience.

Staff, parents and children will all benefit from home visits and activities. Grantees shall not require that parents permit home visits as a condition of the child's participation in Head Start. However, every effort must be made to explain the advantages of visits to parents.



TRANSMITTAL NOTICE  
DEFINITIONS AS USED ON CHARTS B AND C

A - General Responsibility

The individual or group with legal and fiscal responsibility guides and directs the carrying out of the function described through the person or group given operating responsibility.

B - Operating Responsibility

The individual or group that is directly responsible for carrying out or performing the function, consistent with the general guidance and direction of the individual or group holding general responsibility.

C - Must Approve or Disapprove

The individual or group (other than persons or groups holding general and operating responsibility, A and B above) must approve before the decision is finalized or action taken. The individual or group must also have been consulted in the decision making process prior to the point of seeking approval.

If they do not approve, the proposal cannot be adopted, or the proposed action taken, until agreement is reached between the disagreeing groups or individuals.

D - Must be Consulted

The individual or group must be called upon before any decision is made or approval is granted to give advice or information but not to make the decision or grant approval.

E - May be Consulted

The individual or group may be called upon for information, advice or recommendations by those individuals or groups having general responsibility or operating responsibility.

## TRANSMITTAL NOTICE

	Chart B				Chart C			
	Delegate Agency				Grantee Agency			
	Board	Executive Director	Head Start Policy	Head Start Committee	Head Start Director	Head Start Policy Council	Head Start Director	Head Start Director
FUNCTION								
<p>A = General Responsibility B = Operating Responsibility C = Must Approve or Disapprove D = Must be Consulted E = May be Consulted</p> <p>I. <u>PLANNING</u></p> <p>(a) Identify child development needs in the area to be served (by CAA if not delegated)</p> <p>(b) Establish goals of Head Start Program and develop ways to meet them within HEW guidelines</p> <p>(c) Determine Delegate Agencies and areas in the community in which Head Start Programs will operate</p> <p>(d) Determine location of centers or classes</p> <p>(e) Develop plans to use all available community resources in Head Start</p>	A	B	D	D	A	B	D	D
	A	C	C	B	A	C	C	3
	-	-	-	-	A	D	C	B
	A	D	C	B	-	-	-	-
	A	D	C	B	A	D	C	B



## TRANSMITTAL NOTICE

	Chart B				Chart C			
	Delegate Agency				Grantee Agency			
FUNCTION	Board	Executive Director	Head Start Director	Policy Committee	Head Start Director	Policy Council	Head Start Director	Director
<p>A = General Responsibility B = Operating Responsibility C = Must Approve or Disapprove D = Must be Consulted E = May be Consulted</p> <p><u>I. PLANNING - Continued</u></p> <p>(f) Establish criteria for selection of children within applicable laws and HEW guidelines</p> <p>(g) Develop plan for recruitment of children</p>	-	-	-	-	A	C	C	B
	A	C	B	C	-	-	-	-
<p><u>II. GENERAL ADMINISTRATION</u></p> <p>(a) Determine the composition of the appropriate Policy Group and the method for setting it up (within HEW guidelines)</p> <p>(b) Determine what services should be provided to Head Start from the CAA Central Office and the neighborhood centers</p>	A	B	C	C	A	B	C	D
	-	-	-	-	A	B	C	D

## TRANSMITTAL NOTICE

FUNCTION	Chart B				Chart C			
	Delegate Agency				Grantee Agency			
	Board	Executive Director	Head Start Director	Policy Committee Head Start Director	Board	Executive Director	Head Start Director	Policy Council Head Start Director
<p>A = General Responsibility B = Operating Responsibility C = Must Approve or Disapprove D = Must be Consulted E = May be Consulted</p> <p>II. <u>GENERAL ADMINISTRATION - Continued</u></p> <p>(c) Determine what services should be provided to Head Start from Delegate Agency</p> <p>(d) Establish a method of hearing and resolving community complaints about the Head Start program</p> <p>(e) Direct the CAA Head Start staff in day to day operations</p> <p>(f) Direct the Delegate Agency H/S staff in day to day operations</p> <p>(g) Ensure that standards for acquiring space, equipment and supplies are met</p>	A	B	C	D	-	-	-	-
	D	C	A	B	D	C	A	B
	-	-	-	-	E	A	E	B
	E	A	E	B	-	-	-	-
	A	D	D	B	A	D	D	B





## TRANSMITTAL NOTICE

	Chart B				Chart C			
	Delegate Agency				Grantee Agency			
	Board	Executive Director	Head Start Director	Policy Committee	Head Start Director	Policy Council	Head Start Director	Head Start Director
A = General Responsibility B = Operating Responsibility C = Must Approve or Disapprove D = Must be Consulted E = May be Consulted								
FUNCTION								
IV. <u>GRANT APPLICATION PROCESS</u>								
(a) Prepare request for funds and proposed work program								
Prior to sending to CAA-	A	C	B	C				
Prior to sending to HEW-	-	-	-	-	-	-	-	-
(b) Make major changes in budget and work program while program is in operation	A	C	B	C	A	C	C	B
(c) Provide information needed for pre-review to Policy Council	A	D	B	C				
(d) Provide information needed for pre-review to HEW	-	-	-	-	A	D	C	B
V. <u>EVALUATION</u>								
Conduct self-evaluation of agency's H/S program	A	D	D	B	A	D	B	D



47a

OEO INSTRUCTION 6441 - 1 (REFERRED TO IN APPELLANT'S  
BRIEF, P. 14, AND APPEARS AT PP. [A106 - A108]  
OF APPELLEES' APPENDIX).

FEDERAL APPELLEE'S MEMORANDUM, PAGE 2 (REFERRED TO  
APPELLANT'S BRIEF, P. 15).

2.

This memorandum is submitted in reply to the letter of plaintiff's attorneys to the Court, dated July 12, 1974.

The affidavit of Angel Rivera submitted herewith should set at rest plaintiff's attempts to picture the Office of Economic Opportunity as taking a legal position in conflict with the Department of Health, Education and Welfare. It is clear, as set forth in the previous memoranda submitted by defendants, that Project Headstart is the sole responsibility of the Department of Health, Education, and Welfare.

The Office of Economic Opportunity had and still has a continuing relationship with community action agencies, including the plaintiff. As part of this relationship, OEO can be expected to be concerned with actions, such as the ones at issue, that have an effect on community action agencies. But OEO has no legal responsibility in the area of Headstart programs and, in exercising its legal responsibilities, has had no occasion to make any decisions concerning the dispute at issue.

Plaintiff has reiterated its argument that HEW did not follow certain OEO instructions. But plaintiff continues to fail to even attempt to demonstrate that HEW is bound to follow these instructions. The language in paragraph 4 of the July 1973 Letter of Understanding is clearly permissive and, in any case, allows for diversion with consultation. HEW never claimed to have followed OEO Instruction No. 6441-1, and,



## SEC. 604 OF E O A (REFERRED TO IN APPELLANT'S BRIEF, P. 18).

## APPEALS, NOTICE AND HEARING

Sec. 604. The Director shall prescribe procedures to assure that—

(1) special notice of and an opportunity for a timely and expeditious appeal to the Director is provided for an agency or organization which would like to serve as a delegate agency under title I-B or II and whose application to the prime sponsor or community action agency has been wholly or substantially rejected or has not been acted upon within a period of time deemed reasonable by the Director;

(2) financial assistance under title I-B, II, and III-B shall not be suspended for failure to comply with applicable terms and conditions, except in emergency situations, nor shall an application for refunding under section 123, 221, 222 or 312 be denied, unless the recipient agency has been given reasonable notice and opportunity to show cause why such action should not be taken; and

(3) financial assistance under title I-B, II, and III-B shall not be terminated for failure to comply with applicable terms and conditions unless the recipient agency has been afforded reasonable notice and opportunity for a full and fair hearing.

*Heavily*

50a

EXHIBIT 3 OF APPELLANT'S MEMORANDUM OF LAW  
(REFERRED TO IN APPELLANT'S BRIEF, P. 18).

**OFFICE OF ECONOMIC  
OPPORTUNITY**  
EXECUTIVE OFFICE OF THE PRESIDENT  
WASHINGTON, D. C. 20506

Type of Issuance

OEO NOTICE

Number

6730-2

Subject

Denial of Application for  
Refunding

Date

July 21, 1970

Office of Primary Responsibility

General Counsel

Supersedes

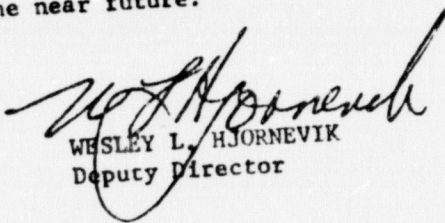
Distribution

CR  
10, 15, 35-4

This Notice expires July 21, 1971 unless sooner rescinded or superseded

APPLICABILITY: Grantees receiving financial assistance under Sections 221, 222, and 312 of the Economic Opportunity Act of 1964, as amended, when the assistance is administered by OEO.

PURPOSE: The attached regulations were published in the Federal Register and became effective on March 22, 1970. They establish rules and review procedures for the denial of a current recipient's application for refunding under sections 221, 222, or 312 of the Economic Opportunity Act. These regulations will also be issued in the format of an OEO Instruction in the near future.

  
WESLEY L. HJORNEVIK  
Deputy Director

Attachment



**EXHIBIT 3 OF APPELLANT'S MEMORANDUM OF LAW  
(REFERRED TO IN APPELLANT'S BRIEF, P. 18)**

OEO Notice 6730-2

**PART 1067—FUNDING OF COMMUNITY ACTION PROGRAMS**

**Subpart—Denial of Application for Refunding**

Chapter X, Part 1067 of Title 45 of the Code of Federal Regulations is amended by adding a new subpart, reading as follows:

**Subpart—Denial of Application for Refunding**

- Sec.**  
1067.2-1 Applicability of this subpart.  
1067.2-2 Purpose.  
1067.2-3 Definitions.  
1067.2-4 Procedures.  
1067.2-5 Right to counsel.

**AUTHORITY:** The provisions of this subpart issued under secs 213, 602, and 604 of the Economic Opportunity Act of 1964, as amended; 81 Stat. 695; 78 Stat. 528; 81 Stat. 715; 42 U.S.C. 2708, 2942, 2944.

**§ 1067.2-1 Applicability of this subpart.**

This subpart applies to grantees receiving financial assistance under sections 221, 222, and 312 of the Economic Opportunity Act of 1964, as amended (EOA), when the assistance is administered by OEO.

**§ 1067.2-2 Purpose.**

This subpart establishes rules and review procedures for the denial of a current recipient's application for refunding under sections 221, 222, or 312 of the EOA. It does not apply to any administrative action of OEO based upon any violation, or alleged violation, of Title VI of the Civil Rights Act of 1964. In the case of such violation or alleged violation, the provisions of Part 1010 of this Title shall apply.

**§ 1067.2-3 Definitions.**

As used in this subpart, the terms "OEO", "Director" and "recipient" shall be defined in accordance with § 1067.1-3, except that the term "recipient" as used in this subpart only includes recipients under sections 221, 222, and 312 of the EOA.

**§ 1067.2-4 Procedures.**

(a) Wherever possible, OEO shall make a tentative decision at the time of its field prereview as to the level of refunding which it intends to furnish a recipient for the recipient's next program year. An OEO official shall notify the recipient of this tentative decision normally in the letter of understanding and as soon as possible following the field preview.

(b) The procedures set forth in paragraphs (c) through (g) of this section shall apply only where an application for refunding submitted by a current recipient is rejected or is reduced to 80 percent or less of the recipient's current level of operations (programs-in-place) or where OEO requires that a program account be eliminated or reduced to 80 percent or less of the current level of operations. These procedures apply only to assistance furnished under sections 221, 222 and 312 of the Act, an apply only to reductions based on circumstances related to the particular grant, such as ineffective or improper use of Federal funds or noncompliance with

OEO directives. These procedures do not apply to reductions based on general policy or in instances where regardless of a recipient's current level of operations (program-in-place), its application for refunding is not reduced by 20 percent or more.

(c) Before rejecting an application of a recipient for refunding or reducing the refunding within the meaning of paragraph (b) of this section, OEO shall notify the recipient of its intention and shall offer the recipient an opportunity to submit written material and to meet informally with an OEO official to show cause why its application for refunding should not be rejected or reduced. Written notification of OEO's intention shall be sent to the recipient as far in advance of the end of the recipient's current program year as possible. The notice shall inform the recipient that a tentative decision has been made to reject or reduce an application for refunding. The notice shall also state the reasons for the tentative decision to which the applicant shall address himself if he wishes to make a presentation.

(d) If the recipient requests an informal meeting with an OEO official as discussed in paragraph (c) of this section, such a meeting shall be scheduled by OEO as soon as possible after the notice is sent to the recipient informing it of OEO's tentative decision to reject or reduce its application for refunding. However, this meeting may not, without the consent of the recipient, be scheduled sooner than 14 days after OEO has mailed the notice to the recipient. If without fault on the part of the recipient, the recipient's operating funds have been exhausted before it has been afforded an opportunity to meet with an OEO official, the recipient shall be furnished sufficient financial assistance by OEO to maintain its present level of program operations until it has had such opportunity.

(e) The official who shall conduct this meeting shall be an OEO official who is authorized to make the grant of assistance in question, or his designee. However, in the case of any grant which may be made by a regional official only with the concurrence of a Headquarters official, and in which the application for refunding is proposed to be rejected or reduced upon the initiative of the Headquarters official, the meeting shall be conducted by such Headquarters official or his designee.

(f) An OEO official who participated in the tentative decision to reject or reduce the application for new assistance shall wherever possible attend the meeting. The meeting shall be held in Washington, D.C., in the appropriate Regional Office, or in the city or county in which the recipient is located. Within the limits stated in the preceding sentence, the decision as to where the meeting shall be held will be made by OEO. If the meeting is held in a location other than the city or county in which the recipient is located, OEO will authorize the Board of Directors of the recipient to transfer sufficient funds from its current operating grant to pay the travel and per diem expenses of a representative of the Board to attend the meeting.

**ATTACHMENT 1**

(g) The recommendation of the official who conducts the meeting together with any written material submitted by the recipient shall be forwarded for review to an OEO official who is authorized to make the grant of assistance in question. This official shall inform the

recipient of his decision and the basis for the decision.

**§ 1067.2-5 Right to counsel.**

In all proceedings under this subpart, whether formal or informal, the recipient and OEO shall have the right to be represented by counsel or other authorized representatives. If the recipient does not have an attorney acting in that capacity as a regular member of the staff of the organization or a retainer arrangement with an attorney, the Board of Directors of the recipient will be authorized to designate an attorney to represent their organization at the meeting described in § 1067.2-4(f) and to transfer sufficient funds from its current operating grant to pay the fees, travel and per diem expenses of such attorney. The fees for such attorney shall be the reasonable and customary fees for an attorney practicing in the locality of the attorney. However, such fees shall not exceed \$100 per day without the express written approval of OEO. Travel and per diem expenses may be paid to such attorney from grant funds only in accordance with the policies set forth in the Standard Government Travel Regulations and in §§ 1069.3-1 to 1069.3-6 of this chapter (OEO Instruction 6910-1).

**Effective date.** This subpart shall become effective 30 days following the date of publication in the **FEDERAL REGISTER**.

FRANK CARLUCCI,  
Assistant Director  
for Operations.

FEBRUARY 12, 1970.

[P.R. Doc. 70-2197; Filed, Feb. 20, 1970;  
8:45 a.m.]

EXHIBIT 3 OF APPELLANT'S MEMORANDUM OF LAW  
(REFERRED TO IN APPELLANT'S BRIEF, P. 18)

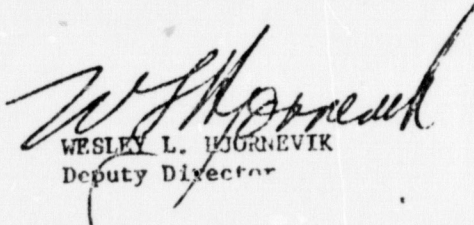
**OFFICE OF ECONOMIC  
OPPORTUNITY**  
EXECUTIVE OFFICE OF THE PRESIDENT  
WASHINGTON, D. C. 20503

Type of Issuance	Number
OEO NOTICE	6730-3
Subject	Date
Suspension and Termination of Assistance	July 21, 1970
	Office of Primary Responsibility General Counsel
Supersedes	Distribution
	CR 10, 15, 35-4

This Notice expires July 21, 1971 unless sooner rescinded or superseded

APPLICABILITY: Grantees receiving financial assistance under Titles I-D, II, and III-B of the Economic Opportunity Act of 1964, as amended, when the assistance is administered by OEO.

The attached regulations were published in the Federal Register and became effective on March 22, 1970. They establish rules and review procedures for the suspension and termination of assistance provided by OEO under titles I-D, II, and III-B of the Economic Opportunity Act, for failure of a recipient to comply with applicable laws, regulations, Community Action Memoranda, standards, issued program guidelines, OEO Instructions, assurances, grant conditions or approved work programs. These regulations will also be issued in the format of an OEO Instruction

  
WESLEY L. MOORHEAD  
Deputy Director



**EXHIBIT 3 OF APPELLANT'S MEMORANDUM OF LAW  
(REFERRED TO IN APPELLANT'S BRIEF, P. 18)**

**ATTACHMENT 1**

**RULES AND REGULATIONS**

**OEO Not. 6730-3**

der titles I-D, II, and III-B, of the Economic Opportunity Act of 1964, as amended (hereinafter the Act) for failure of a recipient to comply with applicable laws, regulations, Community Action Memoranda, standards, issued program guidelines, OEO Instructions, assurances, grant conditions or approved work programs.

(b) However, this subpart shall not apply to any administrative action of the Office of Economic Opportunity based upon any violation, or alleged violation, of title VI of the Civil Rights Act of 1964. In the case of such violation or alleged violation the provisions of Part 1010 of this chapter shall apply.

**§ 1067.1-2 Application of this part.**

This subpart applies to programs authorized under titles I-D, II, and III-B of the Act, and administered by OEO. It does not apply to programs whose administration has been delegated to another Federal agency.

**§ 1067.1-3 Definitions.**

As used in this subpart—

(a) The term "OEO" means the Office of Economic Opportunity and includes each Regional Office.

(b) The term "Director" means the Director of the Office of Economic Opportunity.

(c) The term "responsible OEO official" means the Director and Deputy Director of OEO and any other official who is authorized to make the grant of assistance in question. In addition to the foregoing officials, in the case of the suspension proceedings described in § 1067.1-4, the term "responsible OEO official" shall also include a designee of an OEO official who is authorized to make the grant of assistance in question.

(d) The term "assistance" means assistance under titles I-D, II, and III-B of the Act in the form of grants of Federal funds for the administration of which OEO has primary responsibility.

(e) The term "recipient" means a public or private agency, institution or organization or a State or other political jurisdiction which has received assistance under title I-D, II, or III-B of the Act, but does not include individuals who ultimately receive benefits under any program of assistance.

(f) The term "delegate agency" means a public or private agency, institution or organization or a State or other political jurisdiction to which the development, conduct, or administration of all or part of a project assisted under titles I-D, II, or III-B of the Act has been delegated by a direct recipient of the assistance or by another agency or organization which has received assistance by or through a direct recipient, but does not include individuals who ultimately receive benefits under any program or assistance.

(g) The term "party" in the case of a termination hearing means OEO, the recipient concerned, and any other agency or organization which has a right or which has been granted permission by the presiding officer to participate in a hearing concerning termination of as-

sistance to the recipient pursuant to § 1067.1-5(c).

(h) The term "termination" means any action permanently terminating or curtailing assistance to all or any part of a program prior to the time that such assistance is concluded by the terms and conditions of the document in which such assistance is extended, but does not include the refusal to provide new or additional assistance.

(i) The term "suspension" means any action temporarily suspending or curtailing assistance in whole or in part, to all or any part of a program, prior to the time that such assistance is concluded by the terms and conditions of the document in which such assistance is extended, but does not include the refusal to provide new or additional assistance.

**§ 1067.1-4 Suspension.**

(a) *General.* The responsible OEO official may suspend assistance to a recipient in whole or in part for breach or threatened breach of any requirement stated in § 1067.1-1. Such suspension shall be pursuant to notice and opportunity to show cause why assistance should not be suspended as provided in paragraph (b) of this section. However, in emergency cases where the responsible OEO official determines summary action is appropriate, the alternative summary procedure of paragraph (c) of this section shall be followed.

(b) *Suspension on notice.* (1) Except as provided in paragraph (c) of this section, the procedure for suspension shall be on notice or intent to suspend as hereinafter provided.

(2) The responsible OEO official shall notify the recipient by letter or by telegram that OEO intends to suspend assistance in whole or in part unless good cause is shown why assistance should not be suspended. In such letter or telegram the responsible OEO official shall specify the grounds for the proposed suspension and the proposed effective date of the suspension.

(3) The responsible OEO official shall also inform the recipient of its right to submit written material in opposition to the intended suspension and of its right to request an informal meeting at which the recipient may respond and attempt to show why such suspension should not occur. The period of time within which the recipient may submit such written material or request the informal meeting shall be established by the responsible OEO official in the notice of intent to suspend. However, in no event shall the period of time within which the recipient must submit written material or request such a meeting be less than 5 days after the notice of intent to suspend assistance has been sent. If the recipient requests a meeting, the responsible OEO official shall fix a time and place for the meeting, which shall not be less than 5 days after the recipient's request is received by OEO.

(4) In lieu of the provisions of subparagraph (3) of this paragraph dealing with the right of the recipient to request an informal meeting, the responsible OEO official may on his own initiative

## Title 45—PUBLIC WELFARE

### Chapter X—Office of Economic Opportunity

#### PART 1009—SUSPENSION AND TERMINATION OF ASSISTANCE

#### PART 1067—FUNDING OF COMMUNITY ACTION PROGRAMS

##### Subpart—Suspension and Termination of Assistance

Chapter X of Title 45 of the Code of Federal Regulations is amended by rescinding Part 1009 and by adding a new Part 1067, reading as set forth above, and a new subpart, reading as follows:

##### Subpart—Suspension and Termination of Assistance

Sec.	
1067.1-1	Purpose and scope.
1067.1-2	Application of this part.
1067.1-3	Definitions.
1067.1-4	Suspension.
1067.1-5	Termination.
1067.1-6	Time and place of termination hearings.
1067.1-7	Termination hearing procedures.
1067.1-8	Decisions and notices regarding termination.
1067.1-9	Right to counsel; travel expenses.
1067.1-10	Modification of procedures by consent.
1067.1-11	Other remedies.

**AUTHORITY:** The provisions of this subpart issued under secs. 151, 213, 602, and 604 of the Economic Opportunity Act of 1964, as amended; 81 Stat. 688, 695, 78 Stat. 538, 61 Stat. 715; 42 USC 2764, 2766, 2912, 2944.

**§ 1067.1-1 Purpose and scope.**

(a) This subpart establishes rules and review procedures for the suspension and termination of assistance provided by the Office of Economic Opportunity un-

**EXHIBIT 3 OF APPELLANT'S MEMORANDUM OF LAW  
(REFERRED TO IN APPELLANT'S BRIEF, P. 18)**

OEO Not. 6730-3

**RULES AND REGULATIONS****ATTACHMENT 1**

establish a time and place for such a meeting. However, in no event shall such a meeting be scheduled less than 7 days after the notice of intent to suspend assistance is sent to the recipient.

(5) The responsible OEO official may in his discretion extend the period of time or date referred to in the previous paragraphs of this section and shall notify the recipient of any such extension.

(6) At the time the responsible OEO official sends the notification referred to in subparagraphs (2), (3), and (4) of this paragraph to the recipient, he shall also send a copy of it to any delegate agency whose activities or failures to act are a substantial cause of the proposed suspension, and shall inform such delegate agency that it shall be entitled to submit written material or to participate in the informal meeting referred to in subparagraphs (3) and (4) of this paragraph. In addition the responsible OEO official may in his discretion give such notice to any other delegate agency.

(7) Within 3 days of receipt of the notice referred to in subparagraphs (2), (3), and (4) of this paragraph, the recipient shall send a copy of such notice and a copy of these regulations to all delegate agencies which would be financially affected by the proposed suspension action. Any delegate agency that wishes to submit written material may do so within the time stated in the notice. Any delegate agency that wishes to participate in the informal meeting with the responsible OEO official contemplated herein (if not afforded a right to participate under the previous subparagraphs) may request permission to do so from the responsible OEO official, who may in his discretion grant or deny such permission. In acting upon any such request from a delegate agency, the responsible OEO official shall take into account the effect of the proposed suspension on the particular delegate agency, the extent to which the meeting would become unduly complicated as a result of granting such permission, and the extent to which the interests of the delegate agency requesting such permission appear to be adequately represented by other participants.

(8) In the notice of intent to suspend assistance the responsible OEO official shall invite voluntary action to adequately correct the deficiency which led to the initiation of the suspension proceeding.

(9) The responsible OEO official shall consider any timely material presented to him in writing, any material presented to him during the course of the informal meeting provided for in subparagraphs (3) and (4) of this paragraph as well as any showing that the recipient has adequately corrected the deficiency which led to the initiation of suspension proceedings. If after considering the material presented to him the responsible OEO official concludes that the recipient has failed to show cause why assistance should not be suspended, he may suspend assistance in whole or in part and under such terms and conditions as he shall specify.

(10) Notice of such suspension shall be promptly transmitted to the recipient and shall become effective upon delivery. Suspension shall not exceed 21 days unless during such period of time termination proceedings are initiated in accordance with § 1067.1-5, or unless the responsible OEO official and the recipient agree to a continuation of the suspension for an additional period of time. If termination proceedings are initiated, the suspension of assistance shall remain in full force and effect until such proceedings have been fully concluded.

(11) During a period of suspension no new expenditures shall be made and no new obligations shall be incurred in connection with the suspended program except as specifically authorized in writing by the responsible OEO official. Expenditures to fulfill legally enforceable commitments made prior to the notice of suspension, in good faith and in accordance with the recipient's approved work program, and not in anticipation of suspension or termination, shall not be considered new expenditures. However, funds shall not be recognized as committed solely because the recipient has obligated them by contract or otherwise to a delegate agency.

*Note:* Willful misapplication of funds may violate section 301 of the Economic Opportunity Amendments of 1967, 42 U.S.C. 2703, or other criminal statutes.

(12) The responsible OEO official may in his discretion modify the terms, condition and nature of the suspension or rescind the suspension action at any time on his own initiative or upon a showing satisfactory to him that the recipient has adequately corrected the deficiency which led to the suspension and that repetition is not threatened. Suspensions partly or fully rescinded may, in the discretion of the responsible OEO official be reimposed with or without further proceedings: *Provided however*, That the total time of suspension may not exceed 21 days unless termination proceedings are initiated in accordance with § 1067.1-5 or unless the responsible OEO official and the recipient agree to a continuation of the suspension for an additional period of time. If termination proceedings are initiated, the suspension of assistance shall remain in full force and effect until such proceedings have been fully concluded.

(c) *Summary suspension.* (1) The responsible OEO official may suspend assistance without the prior notice and opportunity to show cause provided in paragraph (b) of this section if he determines in his discretion that immediate suspension is necessary because of a serious risk of (i) substantial injury to or loss of project funds or property, or (ii) violation of a Federal, State or local criminal statute, or (iii) violation of section 603(b) or 613 of the Economic Opportunity Act or of OEO Instructions implementing these sections of the Act, and that such risk is sufficiently serious to outweigh the general policy in favor of advance notice and opportunity to show cause.

(2) Notice of summary suspension shall be given to the recipient by letter or by telegram, shall become effective upon delivery to the recipient, and shall specifically advise the recipient of the effective date of the suspension and the extent, terms, and condition of any partial suspension. The notice shall also forbid the recipient to make any new expenditures or incur any new obligations in connection with the suspended portion of the program. Expenditures to fulfill legally enforceable commitments made prior to the notice of suspension, in good faith and in accordance with the recipient's approved work program, and not in anticipation of suspension or termination, shall not be considered new expenditures. However, funds shall not be recognized as committed by a recipient solely because the recipient obligated them by contract or otherwise to a delegate agency. (See note under paragraph (b) (11) of this section.)

(3) In the notice of summary suspension the responsible OEO official shall advise the recipient that it may request OEO to provide it with an opportunity to show cause why the summary suspension should be rescinded. If the recipient requests such an opportunity, the responsible OEO official shall immediately inform the recipient in writing of the specific grounds for the suspension and shall within 7 days after receiving such request from the recipient hold an informal meeting at which the recipient may show cause why the summary suspension should be rescinded. Notwithstanding the provisions of this subparagraph, the responsible OEO official may proceed to initiate termination proceedings at any time even though assistance to the recipient has been suspended in whole or in part. In the event that termination proceedings are initiated, the responsible OEO official shall nevertheless afford the recipient, if it so requests, an opportunity to show cause why suspension should be rescinded pending the outcome of the termination proceedings.

(4) Notices of summary suspension shall also be furnished by the responsible OEO official and by the recipient to delegate agencies in the same manner as notices of intent to suspend as set forth in paragraph (b) (6), (7), and (8) of this section. Delegate agencies shall have the same right to submit written material to the responsible OEO official or to participate in the informal meeting as in the case of intended suspension proceedings set forth in paragraph (b) (6) and (7) of this section.

(5) The effective period of a summary suspension of assistance may not exceed 10 days unless terminated proceedings are initiated in accordance with § 1067.1-5, or unless the parties agree to a continuation of summary suspension for an additional period of time, or unless the recipient, in accordance with subparagraph (3) of this paragraph, requests an opportunity to show cause why the summary suspension should be rescinded.

(6) If the recipient requests an opportunity to show cause why a summary suspension action should be rescinded the



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suspension of assistance shall continue in effect until the recipient has been afforded such opportunity and a decision has been made. Such a decision shall be made within 5 days after the conclusion of the informal meeting referred to in subparagraph (3) of this paragraph. If the responsible OEO official concludes, after considering all material submitted to him, that the recipient has failed to show cause why the suspension should be rescinded, the responsible OEO official may continue the suspension in effect for an additional 7 days: *Provided however*, That if termination proceedings are initiated, the summary suspension of assistance shall remain in full force and effect until all termination proceedings have been fully concluded.

**\* § 1067.1-5 Termination.**

(a) If the responsible OEO official believes that an alleged failure to comply with any requirement stated in § 1067.1-1 may be sufficiently serious to warrant termination of assistance, whether or not assistance has been suspended, he shall so notify the recipient by letter or telegram. The notice shall state that there appear to be grounds which warrant terminating the assistance and shall set forth the specific reasons therefor. If the reasons result in whole or substantial part from the activities of a delegate agency, the notice shall identify that delegate agency. The notice shall also advise the recipient that the matter has been set down for hearing at a stated time and place, in accordance with § 1067.1-6. In the alternative the notice shall advise the recipient of its right to request a hearing and shall fix a period of time which shall not be less than 10 days in which the recipient may request such a hearing.

(b) Termination hearings shall be conducted in accordance with the provisions of §§ 1067.1-7 and 1067.1-8. They shall be scheduled for the earliest practicable date, but not later than 30 days after a recipient has requested such a hearing. Consideration shall be given to a request by a recipient to advance or postpone the date of a hearing scheduled by OEO. Any such hearing shall afford the recipient a full and fair opportunity to demonstrate that it is in compliance with all applicable laws, regulations, and other requirements specified in § 1067.1-1. In any termination hearing, OEO shall have the burden of justifying the proposed termination action. However, if the basis of the proposed termination is the failure of a recipient to take action required by law, regulation, or other requirement specified in § 1067.1-1, the recipient shall have the burden of proving that such action was timely taken.

(c) If a recipient requests OEO to hold a hearing in accordance with paragraph (a) of this section, it shall send a copy of its request for such a hearing to all delegate agencies which would be financially affected by the termination of assistance and to each delegate agency identified in the notice pursuant to paragraph (a) of this section. This material shall be sent to these delegate agencies

at the same time the recipient's request is made to OEO. The recipient shall promptly send OEO a list of the delegate agencies to which it has sent such material and the date on which it was sent.

(d) If the responsible OEO official pursuant to paragraph (a) of this section informs a recipient that a proposed termination action has been set for hearing, the recipient shall within 5 days of its receipt of this notice send a copy of it to all delegate agencies which would be financially affected by the termination and to each delegate agency identified in the notice pursuant to paragraph (a) of this section. The recipient shall send the responsible OEO official a list of all delegate agencies notified and the date of notification.

(e) If the responsible OEO official has initiated termination proceedings because of the activities of a delegate agency, that delegate agency may participate in the hearing as a matter of right. Any other delegate agency, person, agency or organization that wishes to participate in the hearing may, in accordance with § 1067.1-7(d), request permission to do so from the presiding officer of the hearing. Such participation shall not, without the consent of OEO and the recipient, alter the time limitations for the delivery of papers or other procedures set forth in this section.

(f) The results of the proceeding and any measure taken thereafter by OEO pursuant to this part shall be fully binding upon the recipient and all its delegate agencies whether or not they actually participated in the hearing.

(g) A recipient may waive a hearing and submit written information and argument for the record. Such material shall be submitted to the responsible OEO official within a reasonable period of time to be fixed by him upon the request of the recipient. The failure of a recipient to request a hearing, or to appear at a hearing for which a date has been set, unless excused for good cause, shall be deemed a waiver of the right to a hearing and consent to the making of a decision on the basis of such information as is then in the possession of OEO.

(h) The responsible OEO official may attempt, either personally or through a representative, to resolve the issues in dispute by informal means prior to the date of any applicable hearing.

**§ 1067.1-6 Time and place of termination hearing.**

The termination hearing shall be held in Washington, D.C., or in the appropriate Regional Office, at a time and place fixed by the responsible OEO official unless he determines that the convenience of OEO, or of the parties or their representatives, requires that another place be selected.

**§ 1067.1-7 Termination hearing procedures.**

(a) *General.* The termination hearing, decision and any review thereof shall be conducted in accordance with the rules of procedure set forth in this section and §§ 1067.1-8 and 1067.1-9.

(b) *Presiding officer.* (1) The presiding officer at the hearing shall be the responsible OEO official or, at the discretion of the responsible OEO official, an independent hearing examiner designated as promptly as possible in accordance with section 3105 of title 5 of the United States Code. The presiding officer shall conduct a full and fair hearing, avoid delay, maintain order, and make a sufficient record for a full and true disclosure of the facts and issues. To accomplish these ends, the presiding officer shall have all powers authorized by law, and he may in all procedural and evidentiary rulings necessary for the conduct of the hearing. The hearing shall be open to the public unless the presiding officer for good cause shown shall otherwise determine.

(2) After the notice described in paragraph (f) of this section is filed with the presiding officer, he shall not consult any person or party on a fact in issue unless on notice and opportunity for all parties to participate. However, in performing his functions under this part the presiding officer may use the assistance and advice of an attorney designated by the General Counsel of OEO or the appropriate Regional Counsel: *Provided*, That the attorney designated to assist him has not represented OEO or any other party or otherwise participated in a proceeding, recommendation, or decision in the particular matter.

(c) *Presentation of evidence.* Both OEO and the recipient are entitled to present their case by oral or documentary evidence, to submit rebuttal evidence and to conduct such examination and cross-examination as may be required for a full and true disclosure of all facts bearing on the issues. The issues shall be those stated in the notice required to be filed by paragraph (f) of this section, those stipulated in a pre-hearing conference or those agreed to by the parties.

(d) *Participation.* (1) In addition to OEO, the recipient, and any delegate agencies which have a right to appear, the presiding officer in his discretion may permit the participation in the proceedings of such persons or organizations as he deems necessary for a proper determination of the issues involved. Such participation may be limited to those issues or activities which the presiding officer believes will meet the needs of the proceeding, and may be limited to the filing of written material.

(2) Any person or organization that wishes to participate in a proceeding may apply for permission to do so from the presiding officer. This application, which shall be made as soon as possible after the notice of suspension or proposed termination has been received by the recipient, shall state the applicant's interest in the proceeding, the evidence or arguments the applicant intends to contribute, and the necessity for the introduction of such evidence or arguments.

(3) The presiding officer shall permit or deny such participation and shall give notice of his decision to the applicant, the recipient, and OEO, and, in the case

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of denial, a brief statement of the reasons therefor: *Provided however*, That the presiding officer may subsequently permit such participation if, in his opinion, it is warranted by subsequent circumstances. If participation is granted, the presiding officer shall notify all parties of that fact and may, in appropriate cases, include in the notification a brief statement of the issues as to which participation is permitted.

(4) Permission to participate to any extent is not a recognition that the participant has any interest which may be adversely affected or that the participant may be aggrieved by any decision, but is allowed solely for the aid and information of the presiding officer.

(e) *Filing*. All papers and documents which are required to be filed shall be filed with the presiding officer. Prior to filing, copies shall be sent to the other parties.

(f) *Notice*. The responsible OEO official shall send the recipient and any other party a notice which states the time, place, nature of the hearing, the legal authority and jurisdiction under which the hearing is to be held. The notice shall also identify with reasonable specificity the facts relied on as justifying termination and the OEO requirements which it is contended the recipient has violated. The notice shall be filed and served not later than 10 days prior to the hearing and a copy thereof shall be filed with the presiding officer.

(g) *Notice of intention to appear*. The recipient and any other party which has a right or has been granted permission to participate in the hearing shall give written confirmation to OEO of its intention to appear at the hearing 3 days before it is scheduled to occur. Failure to do so may, at the discretion of the presiding officer, be deemed a waiver of the right to a hearing.

(h) *Form and date of service*. All papers and documents filed or sent to a party shall be signed in ink by the appropriate party or his authorized representative. The date on which papers are filed shall be the day on which the papers or documents are deposited, postage prepaid in the U.S. mail, or are delivered in person: *Provided however*, That the effective date of the notice that there appear to be grounds which warrant terminating assistance shall be the date of its delivery or attempted delivery at the recipient's last known address as reflected in the records of OEO.

(i) *Prehearing conferences*. Prior to the commencement of a hearing the presiding officer may, subject to the provisions of paragraph (b) (2), of this section, require the parties to meet with him or correspond with him concerning the settlement of any matter which will expedite a quick and fair conclusion of the hearing.

(j) *Evidence*. Technical rules of evidence shall not apply to hearings conducted pursuant to this subpart, but the presiding officer shall apply rules or principles designed to assure production of relevant evidence and to subject testimony to such examination and cross-examination as may be required for a

full and true disclosure of the facts. The presiding officer may exclude irrelevant, immaterial, or unduly repetitious evidence. A transcript shall be made of the oral evidence and shall be made available to any participant upon payment of the prescribed costs. All documents and other evidence submitted shall be open to examination by the parties and opportunity shall be given to refute facts and arguments advanced on either side of the issues.

(k) *Depositions*. If the presiding officer determines that the interests of justice would be served, he may authorize the taking of depositions provided that all parties are afforded an opportunity to participate in the taking of the depositions. The party who requested the deposition shall arrange for a transcript to be made of the proceedings and shall upon request, and at his expense, furnish all other parties with copies of the transcript.

(l) *Official notice*. Official notice may be taken of a public document, or part thereof, such as a statute, official report, decision, opinion or published scientific data issued by any agency of the Federal Government or a State or local government and such document or data may be entered on the record without further proof of authenticity. Official notice may also be taken of such matters as may be judicially noticed in the courts of the United States, or any other matter of established fact within the general knowledge of OEO. If the decision of the presiding officer rests on official notice of a material fact not appearing in evidence, a party shall on timely request be afforded an opportunity to show the contrary.

(m) *Proposed findings and conclusions*. After the hearing has concluded, but before the presiding officer makes his decision, he shall afford each participant a reasonable opportunity to submit proposed findings of fact and conclusions. After considering each proposed finding or conclusion the presiding officer shall state in his decision whether he has accepted or rejected them in accordance with the provisions of § 1067.1-8(a).

**§ 1067.1-B Decisions and notices regarding termination.**

(a) Each decision of a presiding officer shall set forth his findings of fact, and conclusions, and shall state whether he has accepted or rejected each proposed finding of fact and conclusion submitted by the parties, pursuant to § 1067.1-7 (m). Findings of fact shall be based only upon evidence submitted to the presiding officer and matters of which official notice has been taken. The decision shall also specify the requirement or requirements with which it is found that the recipient has failed to comply.

(b) The decision of the presiding officer may provide for continued suspension or termination of assistance to the recipient in whole or in part, and may contain such terms, conditions, and other provisions as are consistent with and will effectuate the purposes of the Act.

(c) If the hearing is held by an independent hearing examiner rather than by the responsible OEO official, he shall make an initial decision, and a copy of this initial decision shall be mailed to all parties. Any party may, within 20 days of the mailing of such initial decision, or such longer period of time as the presiding officer specifies, file with the responsible OEO official his exceptions to the initial decision and any supporting brief or statement. Upon the filing of such exceptions, the responsible OEO official shall, within 20 days of the mailing of the exceptions, review the initial decision and issue his own decision thereon, including the reasons therefor. The decision of the responsible OEO official may increase, modify, approve, vacate, remit, or mitigate any sanction imposed in the initial decision or may remand the matter to the presiding officer for further hearing or consideration.

(d) Whenever a hearing is waived, a decision shall be made by the responsible OEO official and a written copy of the final decision of the responsible OEO official shall be given to the recipient.

(e) The recipient may request the Director to review a final decision by the responsible OEO official which provides for the termination of assistance. Such a request must be made in writing within 15 days after the recipient has been notified of the decision in question and must state in detail the reasons for seeking the review. In the event the recipient requests such a review, the Director or his designee shall consider the reasons stated by the recipient for seeking the review and shall approve, modify, vacate or mitigate any sanction imposed by the responsible OEO official or remand the matter to the responsible OEO official for further hearing or consideration. The decision of the responsible OEO official will be given great weight by the Director or his designee during the review. During the course of his review the Director or his designee may, but is not required to, hold a hearing or allow the filing of briefs and arguments. Pending the decision of the Director or his designee assistance shall remain suspended under the terms and conditions specified by the responsible OEO official, unless the responsible OEO official or the Director or his designee otherwise determines. Every reasonable effort shall be made to complete the review by the Director or his designee within 30 days of receipt by the Director of the recipient's request. The Director or his designee may however extend this period of time if he determines that additional time is necessary for an adequate review.

**§ 1067.1-9 Right to counsel; travel expenses.**

In all proceedings under this subpart, whether formal or informal, the recipient and OEO shall have the right to be represented by counsel or other authorized representatives. If the recipient and any delegate agencies which have a right to participate in an informal meeting pursuant to § 1067.1-4 or a termination



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hearing pursuant to § 1067.1-7 do not have an attorney acting in that capacity as a regular member of the staff of the organization or a retainer arrangement with an attorney, the Boards of Directors of such recipient and delegate agencies will be authorized to designate an attorney to represent their organizations at any such show cause proceeding or termination hearing and to transfer sufficient funds from their current operating grants to pay the fees, travel, and per diem expenses of such attorney. The fees for such attorney shall be the reasonable and customary fees for an attorney practicing in the locality of the attorney. However, such fees shall not exceed \$100 per day without the express written approval of OEO. Travel and per diem expenses may be paid to such attorney from grant funds only in accordance with the policies set forth in the Standard Government Travel Regulations and in §§ 1069.3-1 to 1069.3-6 of this chapter (OEO Instruction 6910-1). The Boards of Directors of the recipient or any delegate agency which has a right to participate in an informal meeting pursuant to § 1067.1-4 or a termination hearing pursuant to § 1067.1-7 will also be authorized to designate two persons in addition to an attorney whose travel and per diem expenses to attend the meeting or hearing may be paid from the organization's current operating grant. Such travel and per diem expenses shall conform to the policies set forth in the Standard Government Travel Regulations and in §§ 1069.3-1 to 1069.3-6 of this chapter (OEO Instruction 6910-1).

§ 1067.1-10 Modification of procedures by consent.

The responsible OEO official or the presiding officer of a termination hearing may alter, eliminate or modify any of the provisions of this subpart with the consent of the recipient and, in the case of a termination hearing, with the consent of all delegate agencies that have a right to participate in the hearing pursuant to § 1067.1-5(e). Such consent must be in writing or be recorded in the hearing transcript.

§ 1067.1-11 Other remedies.

The procedures established by this subpart shall not preclude OEO from pursuing any other remedies authorized by law.

*Effective date.* This subpart shall become effective 30 days following the date of publication in the Federal Register.

FRANK CARLUCCI,  
Assistant Director  
for Operations.

FEBRUARY 12, 1970.

[FED. REG. 70 2190, Filed, Feb. 20, 1970;  
@ 45 a.m.]

EXHIBIT 4 OF APPELLANT'S MEMORANDUM OF LAW  
(REFERRED TO IN APPELLANT'S BRIEF, P. 19).  
OFFICE OF ECONOMIC OPPORTUNITY

DELEGATION OF AUTHORITIES TO  
SECRETARY OF HEALTH, EDUCATION, AND WELFARE

1. Pursuant to Section 602(d) of the Economic Opportunity Act of 1964 (hereinafter "the Act"), I delegate to the Secretary of Health, Education, and Welfare (hereinafter "the Secretary") the powers vested in me by Section 222(a)(1) of the Act (Project Head Start).

2. I further delegate to the Secretary subject to the terms of the Memorandum of Understanding referred to in paragraph 5 below those powers under Sections 222(b) (except the power to conduct research), 225(c), 230, 231, 233, 241 (except 241(a)(2)), 242, 243, 244(1), 244(2), 244(7), 602 (except 602(d)), 603(b), 604, 610-1, and 617 of the Act to the extent deemed necessary or appropriate for the performance of functions delegated to him in paragraph 1 above.

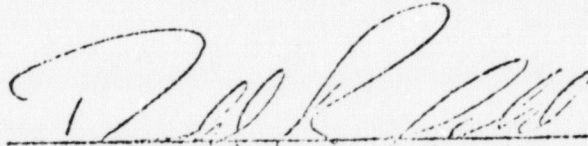
3. Resources for Project Head Start shall be included in the OEO budget and allocated by OEO to the Secretary. In planning, developing, and allocating the annual budgets and supplementals or amendments thereto, OEO shall consult with the Secretary and obtain his recommendations for requirements. The Secretary shall support and assist OEO in the presentation and justification of the budget to the Bureau of the Budget and the Congress.



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4. All operating information, evaluation reports, and other data concerning Project Head Start shall be freely exchanged pursuant to Section 602(d) of the Act.
5. The powers delegated herein shall be exercised in accordance with such memoranda of understanding as have been or shall be entered into by HEW and OEO.
6. The powers delegated herein may be redelegated by the Secretary to other officials of HEW with or without authority for further redelegation.
7. This delegation shall take effect on July 1, 1969.

June 28, 1969  
Date

  
Director  
Office of Economic Opportunity

proved:

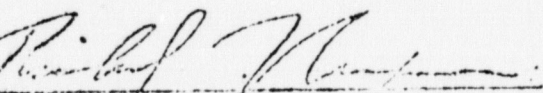
  
President of the United States  
JUN 30 1969  
Date

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 Head Start Memorandum of Understanding

In anticipation of the delegation of Project Head Start to the Department of Health, Education, and Welfare (HEW), OEO and HEW agree to the following:

A. POLICY

1. HEW shall maintain a quality, comprehensive Head Start program, including, but not necessarily limited to, physical and mental health, educational, parent involvement, nutrition and social service activities and follow-up activities. Expansion of the program to serve additional children shall not be accomplished at the expense of program quality.
2. Grants to carry out local programs shall be made directly to public and private nonprofit organizations.
  - (a) In areas where a community action agency (CAA) exists and wishes to be the grantee, the CAA shall be the grantee unless there is clear evidence that the program will be superior under another grantee.
  - (b) Notwithstanding the provisions of subparagraph (a), in areas where an organization exists which is a grantee under Title III-B of the Act, that organization shall, if it wishes, be the grantee for any Head Start program designed to serve migrants unless there is clear evidence that the program will be superior under another grantee.
  - (c) If HEW proposes to fund an agency other than a CAA or Title III-B grantee, as the case may be, in an area where such an agency exists, HEW shall solicit the views of such agency prior to



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funding. If the agency does not concur in the proposed funding,  
HEW shall solicit the views of the OEO Regional Director. If  
the OEO Regional Director does not concur in the proposed fund-  
ing, HEW shall make the grant only with the concurrence of the  
Director of OEO.

3. Local programs shall be required to engage in vigorous recruitment of children in the community who would benefit most from participation in Project Head Start, including children of migrant laborers who do not reside in the community all year round.

(a) At least 90% of the children served by each local program shall  
come from families which meet the OEO poverty criteria in effect  
at the time of enrollment. The poverty criteria shall be as  
prescribed by OEO Instruction 6004.1 and any subsequent modi-  
fication to that Instruction. If a child meets the poverty  
criteria at the time of entry, he will remain eligible as a  
low-income child for Head Start and Follow Through programs until such time as his family's income rises more than \$3,000 above the poverty line.

(b) Measures shall be taken to assure that center locations and attendance zones are selected in a manner which will discourage racially or ethnically segregated programs, and that local programs make diligent efforts to recruit enrollees from all racial and ethnic groups in the attendance areas served by the program. Where the ratio of members of any identifiable racial or ethnic group enrolled in the program to the total enrollment in the program is significantly smaller than the ratio of eligible members of that group to all eligible persons in the

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area served by the program, the grantee shall be required to demonstrate that diligent recruitment has taken place.

4. Local programs shall be required to use professional and nonprofessional volunteers to the fullest extent possible.

5. Measures shall be taken to foster the maximum possible participation of parents in the program.

(a) Each local program shall establish a policy advisory group for each important decision-making level. At least 50% of the members of each such group shall be parents of children enrolled in the program. The functions of a policy advisory group shall include the following:

- (i) Participation in the development of, and concurrence in, applications for funding and refunding; and
- (ii) Participation in the selection of the Program Director and in the establishment of criteria for the selection of other staff personnel.

(b) Each local program shall encourage participation of parents in the classroom as paid employees, volunteers, or observers; shall make home visits by teachers and others a part of its program; and shall develop and carry out a plan of parent education activities.

6. Local programs shall be required to adopt personnel policies that will foster employment of qualified personnel, create employment opportunities for nonprofessionals, and establish a career development system which includes adequate training.



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- (a) A college degree and professional certification shall not be necessary preconditions to professional employment, unless applicable law so requires.
  - (b) Qualification criteria, including those used in Summer Head Start programs operated by school systems, shall not operate so as to limit employment to persons already within an organization.
  - (c) Preference in the filling of nonprofessional positions in local programs shall be given to parents of low-income children enrolled in the program and other residents of the area served whose family income falls below OEO's poverty line, as set forth in OEO Instruction 6004-1 or its successor.
7. A vigorous program of training and technical assistance to grantees and prospective grantees shall be undertaken. Special attention shall be given to communities which might be unable to operate a program effectively if they could not obtain substantial training and technical assistance.

B. ORGANIZATION AND STAFFING

- 1. HEW shall establish Head Start staffs in Washington and such regional offices as may be necessary to administer the program.
- 2. Rights and obligations of OEO employees identified with Project Head Start shall be determined in accordance with the principles set forth in subchapter 3 of Ch. 351 of the Federal Personnel Manual. HEW and OEO agree that Project Head Start is a "function" as that term is defined in the FPM, Ch. 351, Sec. 3-1(a), and that the delegation of Project Head Start to HEW is a "transfer of function" as that term is defined in the FPM, Ch. 351, Sec. 3-1(b).

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3. With the concurrence of HEW, OEO may enter into, extend or supplement contracts under which services or products are provided to Project Head Start, except that when an extension or supplement does not affect Project Head Start, the concurrence of HEW is not required. HEW shall reimburse OEO for the share of payments under such contracts which is fairly allocable to the work done for Project Head Start.

C. COORDINATION

1. Policy.

(a) Primary authority to set Head Start performance criteria shall rest with OEO. This authority will be exercised in close concert and consultation with HEW. In the event that HEW objects to performance criteria proposed by OEO, the final decision shall be made by the Director of OEO.

(b) Primary authority to initiate policies, regulations, and issuances for the operation of Project Head Start shall rest with HEW. OEO's comments and consultation on all proposed policies will be solicited. OEO's concurrence will be obtained for any new policies, or changes in existing policies, which would have major impact on the operation or design of Project Head Start.

2. Existing Grants and Contracts.

(a) All multi-purpose grants to CAAs made by OEO prior to July 1, 1969, and containing a component under which a local Head Start program (summer or full year) is to be operated shall be administered by OEO until the end of the program year funded by the grant.

(b) Existing grants for the operation of Parent and Child Centers shall be administered by HEW commencing July 1, 1969. However, OEO may



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retain the administrative responsibility for not more than ten such centers, to be selected by OEO, in anticipation of funding them as experimental centers under Section 232 of the Act upon expiration of their current grants. HEW and OEO shall jointly decide which of any additional Parent and Child Centers shall be funded and administered as experimental centers by OEO and which shall be funded and administered by HEW.

- (c) All other single-purpose grants made by OEO prior to July 1, 1969, under which a local Head Start program (summer or full-year) is to be operated shall be administered by OEO until September 30, 1969, provided that at the request of the Director, Office of Child Development, OEO will transfer the administration of any grant or group of grants subject to this subparagraph prior to September 30, 1969.
- (d) At the request of HEW, OEO will process and/or make any grants whose current program year ends between June 30, 1969 and September 30, 1969. All grants subject to this subparagraph shall be made as single-purpose grants, for Head Start only, including the funding of local programs which previously were funded as components of a CAA grant. The administrative responsibility for grants made pursuant to this subparagraph shall be governed by subparagraph (c) above.
- (e) Until such time as all questions arising out of annual audits under section 243(c) of the Act are disposed of, OEO shall retain responsibility for dealing with administrative problems arising out of activities under the grant which took place before or during the last full program year for which OEO had administrative responsibility. Thereafter, HEW shall have complete administrative responsibility. In the

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event that the responsibility for the administration of a single-purpose grant is shifted to HEW while a program year is in progress pursuant to subparagraphs (b), (c), and (d) above, HEW shall be responsible for dealing with administrative problems such as audit disallowances arising out of activities which took place during that portion of the program year for which OEO originally had administrative responsibility. HEW shall be fully responsible for the funding and administration of agencies to carry out local Head Start programs subsequent to the end of the last full program year for which OEO had administrative responsibility.

- (f) Responsibility for the administration of Head Start training and technical assistance grants and contracts, and all other contracts relating exclusively to Head Start, except research contracts, shall shift to HEW on July 1, 1969. OEO shall continue to be responsible for the administration of contracts under which work is done both for Project Head Start and for other OEO programs, subject to the provisions of paragraph B-3 above.
- (g) At the request of HEW, OEO shall be responsible for the processing of procurement requests under which performance is scheduled to begin between July 1, 1969 and August 15, 1969, but responsibility for administration of such contracts shall rest with HEW.
- (h) After June 30, 1969, any guidelines and policies formulated by HEW pursuant to paragraph C1(b) shall be applicable to Head Start



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programs administered by OEO pursuant to subparagraphs (a), (c), and (d) above unless an exception is made by mutual agreement.

3. Evaluations.

The division of responsibility for evaluation shall be as follows:

OEO shall be primarily responsible for Type I evaluations. HEW shall be primarily responsible for Type II and III evaluations.

HEW may also carry out Type I evaluations but only with the specific concurrence of OEO. OEO may also carry out Type II evaluations. Type III evaluations may be performed by OEO with the concurrence of HEW. The definitions of the three types of evaluations shall be as set forth in OEO Instruction 3300-1.

All evaluations shall be conducted in accordance with the evaluation program required by and developed pursuant to OEO Manual 3100-1.

Each agency shall make available to the other the results of any evaluations it causes to be conducted.

4. Research and Experimentation.

(a) OEO will, for the purpose of achieving maximum coordination with HEW's research strategy for child development, consult with HEW in the development of the plan required by Section 232(b).

(b) HEW shall encourage the development and testing of new approaches and alternative patterns or styles of providing Head Start services. To the extent provided in the budget, HEW may use operating funds to test new approaches in selected communities by funding experi-

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mental programs which depart in one or more respects from normal operating requirements (other than those required by statute or set forth in paragraphs A-1 through A-3 above). In such cases, grantees may be required to include provision for evaluation of the new approach as part of their operating expenditures. HEW shall keep OEO informed of developments under this procedure, and shall consult with OEO in the formulation of any national models for such experimental programs.

5. Appeals.

OEO will be consulted before a decision is made in any case in which, pursuant to procedures established under Section 604 of the Act, (1) an organization which would like to serve as a delegate agency appeals from an adverse decision by a community action agency, or (2) a grantee other than a community action agency requests an opportunity to show cause why an application for refunding should not be denied.

6. Liaison.

OEO shall establish a liaison office to work with HEW Head Start staff in order to assure the full flow of information between the two agencies.

7. HEW shall have the primary responsibility for inspection and audit of those grants and contracts for which it has administrative responsibility. However, appropriate interagency arrangements will be made to comply with BOB Circular A-73 and avoid duplication of audit effort at those grantees and contractors which administer both Head Start and other OEO grants and contracts. OEO may, after notifying HEW, initiate such special inspections of Head Start grants and con-



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- tracts as it feels necessary. Each agency shall make its inspection and audit reports available to the other.
8. After consultation with HEW, OEO may fund child development programs similar to Project Head Start to the extent that such programs are authorized by Sections 221, 232, or 312 of the Act.
  9. HEW shall secure OEO's concurrence before making any change in the criteria for waiving all or a portion of the non-Federal share required under Section 225(c) of the Act.
  10. OEO shall develop a plan for allocation and reallocation among the States of funds subject to Section 225(a), and the concurrence of HEW shall be required for that portion of the plan affecting the distribution of Head Start funds. OEO shall secure HEW's concurrence before making any separate allotment under Section 225(b) of the Act which would substantially affect Head Start.
  11. HEW shall administer Head Start in such a way as to maximize the coordination with other programs which is described in Section 636(2) of the Act.
  12. OEO concurrence shall be a prerequisite to the initial funding of any project which is designed to serve both Head Start and other children and in which Head Start funds are to be used to pay the costs of the Head Start children while other resources are used to pay the costs of other children.

PLANNING-PROGRAMMING-BUDGETING

1. In performing the budgeting and programming functions, OEO and HEW agree to adhere to OEO Manual 3100-1 entitled "The OEO Planning-

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Programming-Budgeting System."

2. HEW and OEO shall jointly develop procedures and take other necessary steps to enable excess non-Federal share contributed to a Head Start or Follow Through program to be applied to the non-Federal share requirements of other Title II programs in the community, and to enable excess non-Federal contributions to Title II programs administered by OEO to be applied to the non-Federal share requirements of Head Start and Follow Through programs in the community.
3. In accordance with Section 243(c) of the Act, and subject to the limitations therein, an audit disallowance arising out of a grant made to a grantee under Title II of the Act by either OEO or HEW may, if the agency which made the grant and the grantee so agree, be wholly or partially satisfied by an increase in the non-Federal share required under any grant made to the same grantee by either OEO or HEW.

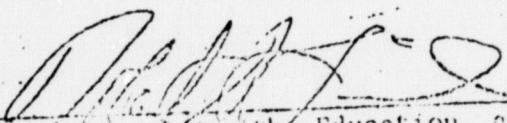
REVIEW OF AGREEMENT

This memorandum shall be reviewed at the request of either party.

JUN 23 1969

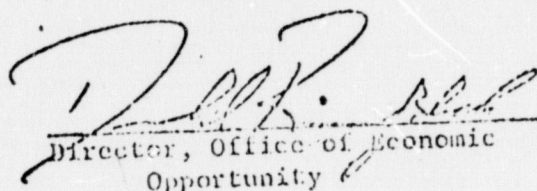
Date

Signed:

  
Secretary of Health, Education, and  
Welfare

June 23, 1969

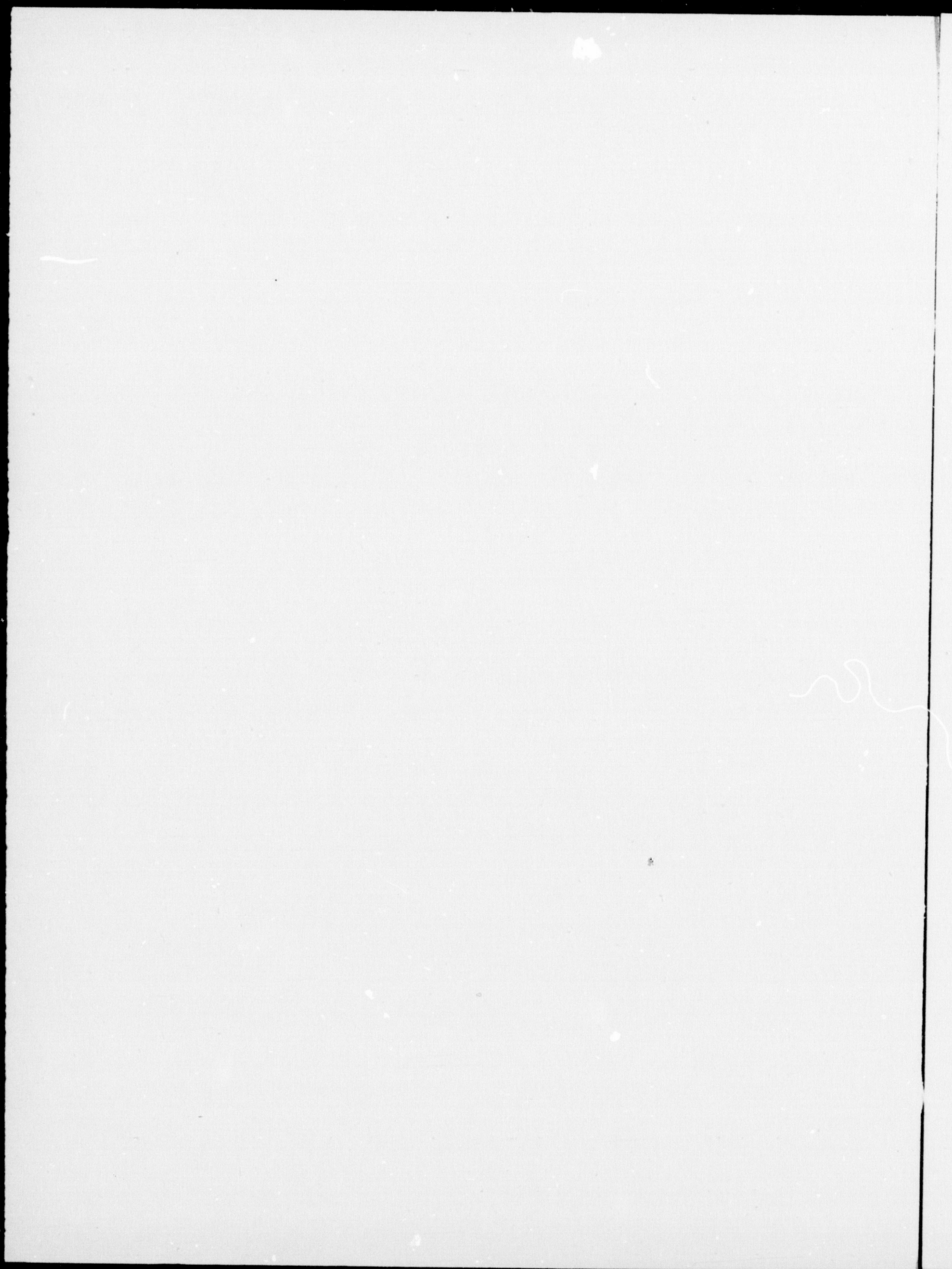
Date

  
Director, Office of Economic  
Opportunity



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DIAZ LETTER DATED AUGUST 30, 1973 (REFERRED TO IN  
APPELLANT'S BRIEF, P. 24, AND APPEARS AT PP.  
[A86 AND A87] OF APPELLEES' APPENDIX).





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hereby admitted this \_\_\_\_\_ day  
of \_\_\_\_\_, 197

\_\_\_\_\_  
Attorney for

Services of three (3) copies of  
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hereby admitted this *22nd* day  
of *January*, 197 *5*

\_\_\_\_\_  
Attorney for

*Wrenn Schmidt*

RECEIVED  
U.S. ATTORNEY

JAN 22 11 20 AM '75

EAST. DIST. N.Y.

*by [signature]*